REQUEST FOR QUALIFICATIONS/PROPOSALS
FOR DESIGN PROFESSIONAL SERVICES CONTRACT
FOR PROJECT NO. 89022014-001 – KANSAS CITY STREETCAR MAIN STREET SOUTHERN EXTENSION
PUBLIC WORKS DEPARTMENT
CITY OF KANSAS CITY, MISSOURI

1. **Purpose.** This is a Request for Qualifications/Proposals ("RFQ/P") for design services for **Project No. 89022014-001 – Kansas City Streetcar Main Street Southern Extension** issued by the City of Kansas City, Missouri ("City).

2. **Definition of Request for Qualifications/Proposals.** This RFQ/P is an invitation by the City to Design Professionals to submit their qualifications and all other required submissions as part of their proposal for performing the services specified in this RFQ/P. Selection will be based upon the judgment of the City in obtaining a Design Professional that will be in the best interests of the City. This RFQ/P is not a request for a competitive bid. Design Professional's submittal of a proposal in response to this RFQ/P does not create any right in or expectation to a contract with the City.

3. **Due Date**. Sealed Proposals are due by **April 25, 2019 at 2:00pm**. Proposals shall be sent to Darrell Everette, Procurement Manager, Procurement Services, General Services Department at 414 East 12th Street, City Hall 1st Floor, Kansas City, Missouri. Design Professionals should submit nine (9) copies of their Proposals as well as two (2) electronic copies (*.pdf) file on separate flash drives. All proposals must be submitted in a sealed envelope or box and shall not be opened until after the due date. The City reserves the right at any time to change or extend the due date and time for any reason.

4. Federal assistance for this Contract is expected to be awarded by the Federal Transit Administration (FTA). The provisions in this Contract will include certain standard terms and conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth.

   a. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F or any revision thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Contract.

   b. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests that would cause City to be in violation of the FTA terms and conditions. The Contractor agrees to include this clause in all subcontracts at any tier. It is further agreed that the clause shall not be modified, except to identify the subcontractors who will be subject to the provision.

5. **RFQ/P Package.** The RFQ/P package for this project contains the following:

   a. Standard City Design Professional Services Contract Parts I and II.
   b. Experience and Reference Form 00410.01

c. Project Schedule (Available via the Streetcar Authority Website - http://kcstreetcar.org/about-streetcar/mainstreet-extension/)
d. Attachment A – Scope of Services
e. Attachment B - Electronic Format Requirements and Naming Conventions
f. Attachment C - Section 00700 Construction General Conditions
g. Attachment D – Schedule of Position Classifications and Hourly Rates
h. Attachment E - Non-Construction Application for Payment Form
i. Attachment F - City - Licensed Geographical Information System Data
j. Attachment G - Non-Construction Subcontractors Listing
k. Attachment H – Conflict of Interest Disclosure Statement
l. Attachment I – FTA 00486 DBE Program
   (1) FTA 00486.01 DBE Contractor Utilization Plan/Request for Waiver
   (2) FTA 00486.02 DBE Letter of Intent to Subcontract
   (3) FTA 00486.03 DBE Request for Modification, Replacement or Termination
   (4) FTA 00486.04 Subcontractor Monthly Utilization Report
   (5) FTA 00486.05 Schedule of Participation by Contractor & Sub-Contractor
m. Attachment K – Federal Transit Administration (FTA) Requirements
   (1) FTA 00487.01 – Affidavit of Primary Participants
   (2) FTA 00487.02 - Affidavit of Lower-Tier Participants – Employee Eligibility Verification
   (3) FTA 00488.01 – Certification of Primary Participants Regarding Debarment
   (4) FTA 00488.02 - Certification of Lower Tier Participants Regarding Debarment
   (5) FTA 00489.01 - Certification of Primary Participants Regarding Restrictions on Lobbying
   (6) FTA 00489.2 – Certification of Lower Tier Participants Regarding Restrictions on Lobbying
   (7) FTA 00492 – Anti-collusion Statement
   (8) Proposal/Contract Calendar (Anticipated)

RFQ/P Advertised and Issued.....…March 11, 2019

Pre-Proposal Conference..... March 27, 2019
KCMO Health Department - Biery Auditorium
2400 Troost Ave., Kansas City, MO
9:00 a.m.

Questions, Comments and Requests for Clarifications Due ..... March 19, 2019
4:00 p.m.

Response to Questions, Comments and Requests for Clarification..... March 21, 2019

RFQ Closing (Tentative, Subject to Extension) ..... April 25, 2019
2:00 p.m.

Interviews & Selection (Tentative, if Required)..... May 10, 2019

Phase I (PE to 30% Design Level) Scope & Fee Negotiations (Tentative) May 10 – May 16, 2019

Council Approval (Tentative)..... May 23, 2019

Contract NTP for Phase I Design to 30% Level ..... June 6, 2019

FUTURE POSSIBLE CONTRACT AMENDMENTS

Phase II (Final Design) Scope & Fee Negotiations (Tentative/Optional)..... January, 2020

Council Approval (Tentative following FTA approval for "Entry into Engineering")..... February, 2020

Contract NTP for Phase II ..... February, 2020

Phase III (Construction Phase Engineering) Scope & Fee Negotiations (Tentative/Optional)..... April, 2021

Council Approval (Tentative following FTA approval of FFGA)..... May, 2021

Contract NTP for Phase III ..... June, 2021

6. **Proposal Requirements.** Your proposal should include the following:

   a. Experience and Reference Summary. Detail qualifications and expertise and provide specific examples of relevant work experience with other projects of this type and the role and degree of your firm/teams involvement with each.

   b. List and description of key team members' professional experience. For project team responsibilities, list the approximate percentage of the project for each team member. ***Please note the City places a premium on the availability of on-site key consultant staff in the Kansas City area, both as a means of reducing project costs and to help ensure a thorough and integrated understanding of the project.***

   c. Description of project approach.

      (1) Include a description of your experience in meeting ADA standards and conforming to LEED Gold standards along with Envision ISI Rating and Certification.

   d. Description of the Quality Assurance Plan.

e. Description of the earliest times and durations of time that work may commence and when it can be completed along with a detailed explanation of the the strategy that will be used.

f. FTA 00487.01 – Affidavit of Primary Participants

g. FTA 00488.01 – Certification of Primary Participants Regarding Debarment

h. FTA 00489.01 - Certification of Primary Participants Regarding Restrictions on Lobbying

i. FTA 00492 – Anti-collusion Statement

j. Conflict of Interest Disclosure Statement

Proposals should be limited to **thirty five (35) pages** in 12 point Font on (8-1/2" x 11") paper using one side of the page and numbered. Resumes, Covers, Tables of Contents, and divider tabs will not count as pages, provided no additional information is included on those pages.

Any supplemental information or documents (i.e., not required by this RFQ/P) that are included in the proposal should be marked as an Attachment and clearly identified in the Table of Contents.

Note: When requested in writing by the City, Proposer shall submit the following:

a. FTA 00487.02 - Affidavit of Lower-Tier Participants – Employee Eligibility Verification

b. FTA 00488.02 - Certification of Lower Tier Participants Regarding Debarment

c. FTA 00489.02 – Certification of Lower Tier Participants Regarding Restrictions on Lobbying

d. FTA 00486.05 Schedule of Participation by Contractor & Sub-Contractor

7. **Sustainability.** The City has adopted an overall policy supporting a greater use of "green solutions" or enhanced sustainability measures that considers environmental quality, social equity and economic vitality. Include a concise summary of your company's policies, strategies, and actions that demonstrate your philosophy and commitment to sustainability. In order to minimize waste, enhance efficiencies, and achieve multiple benefits and project synergies, all City projects must identify opportunities for sustainability improvements and implement those improvements when financially reasonable and operationally practical.

a. Describe how your proposal will address the established City policies referenced in this RFP specific to the project or service on which you are proposing.

b. In order to incorporate, sustainability and efficiency throughout the planning, design, construction, operation and maintenance of the project, highlight each component of the project that you feel deserves consideration in this context and demonstrate how these components are efficiently integrated into the project.

c. Use of Alternates. If sustainability opportunities are identified that are outside the exact scope of this RFP, the City will consider alternates that accomplish the overall intent of the project in more efficient and sustainable ways, provided their initial cost

premium is no greater than 10 percent and their demonstrated rate of return on the investment is not greater than 10 years. The City reserves the right to modify these criteria depending on intangible benefits that are difficult to quantify and based on information submitted by the Proposer and additional research as necessary.

d. If it is not possible to comprehensively integrate significant sustainability measures, then highlight elements you feel deserve consideration in this context.

8. **Prohibited activities by former City employees and officials.** Section 2-2044 of the City's Code prohibits former elected City officials and former executive or administrative employees of the City from trying to influence a decision of the City on behalf of an employer or client for one year after that former employee or official leaves the City's employ. By submitting a proposal, Design Professional affirms that Design Professional and its team members and employees are in compliance with the requirements of Section 2-2044. Failure to comply with the requirements of Section 2-2044 may cause the Proposal to be rejected.

9. **Change in RFQ/P, Contract and Additional Work.** The City reserves the right to add to, delete, modify or enlarge this RFQ/P, including any specifications and/or statement of work, the proposed contract, the terms and conditions, and any subsequently executed contract. The City reserves the right to award additional contracts for related work or subsequent Project phases to the selected Design Professional.

10. **Late Proposals.** Proposals and modifications of proposals received after the exact hour and date specified for receipt will not be considered unless: (1) they are sent via the U.S. Postal Service, common carrier or contract carrier, by a delivery method that guarantees the proposal will be delivered to the City prior to the submission deadline; or (2) if submitted by mail, common carrier or contract carrier it is determined by the City that the late receipt was due solely to an error by the U.S Postal Service, common carrier or contract carrier; or (3) the proposal is timely delivered to the City, but is at a different City location than that specified in this RFQ/P; or (4) the City extends the time after the deadline for a force majeure event that could potentially affect any or all Design Professionals meeting the deadline.

11. **Interviews, Discussions and Negotiations with Design Professionals.** The Design Professional's proposal, including any proposed personnel and any other required proposal documents may be subject to negotiation by the City at any time. The City may interview none, one, some or all of the Design Professionals that submit proposals. Proposals may be evaluated and award made with or without, discussions and/or negotiations with Design Professionals. The City reserves the right to request additional information from any or all Design Professionals. Negotiations by the City will not be deemed a counter offer or a rejection of any original Proposal.

12. **Evaluation and Selection Criteria.**

a. FTA requires that award can only be made to responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. Responsibility criteria include administrative and technical capacity, production capability, timeliness, and satisfactory current or past performance record. Federal requirements are a part of this Contract.

b. The evaluation and selection criteria that will be used to evaluate this RFQ/P is listed below in order of importance.

(1) List and description of key team members' individual professional experience which should include their location. In addition, include information on the availability of key staff members and their availability to this project. ***Please note the City places a premium on the availability of on-site key staff in the Kansas City area, both as a means of reducing project costs and to help ensure a thorough and integrated understanding of the project.***

(2) Description of project approach. Please provide transition plan to include a mobilization schedule.

(3) Form 00410.01 Experience and Reference Summary.

(4) Description of the earliest times and durations of time that work may commence and commitment to meet the project schedule.

(5) Description of the Quality Assurance Plan

13. **Rejection of Proposals.** The City reserves the right to reject any and all Proposals and to award one or more Contracts for all or any portion of the Project.

14. **Best and Final Offers (BAFOs).** The City reserves the right to request one or more best and final offers.

15. **Waivers.**

a. Requests for waivers of Federal requirements may be granted by the Federal Transit Administrator.

b. The City Manager or his delegate at any time may waive any requirements imposed in this RFQ/P or by any City regulation when the requirement waived would be waived for all Design Professionals for this RFQ/P and it is in the best interest of the City to grant the waiver. The City Council at any time may waive any requirements imposed in this RFQ/P by the City's code of ordinances when the waived requirement would be waived for all Design Professionals for this RFQ/P and it is in the best interest of the City to grant the waiver. The City reserves the right to waive any irregularities and/or formalities as deemed appropriate

16. **Closed Records.** All Proposals and documents and meetings relating thereto may remain closed records or meetings under the Missouri Sunshine Act until a contract is executed or until all Proposals are rejected.

17. **Disclosure of Proprietary Information.** A Design Professional may restrict the disclosure of scientific and technological innovations in which it has a proprietary interest, or other information that is protected from public disclosure by law, which is contained in the Proposal by:

a. marking each page of each such document prominently in at least 16 point font with the words "Proprietary Information";

b. printing each page of each such document on a different color paper than the paper on which the remainder of the proposal is printed; and

c. segregating each page of each such document in a sealed envelope, which shall prominently display, on the outside, the words "Proprietary Information" in at least 16-point font, along with the name and address of the Design Professional.

d. After either a contract is executed pursuant to the RFQ/P, or all submittals are rejected, if access to documents marked "Proprietary Information", as provided above, is requested under the Missouri Sunshine Law, the City will notify the Design Professional of the request, and it shall be the burden of the Design Professional to establish that such documents are exempt from disclosure under the law.

18. **Contract Information Management System**. The selected Design Professional shall be required to use City's Internet web based Contract Information Management System/Project Management Communications Tool provided by City and protocols included in that software during the term of this Contract. The selected Design Professional shall submit user applications to City's provided Contract Information Management System for all personnel, subcontractors or suppliers as applicable.

19. **Evaluation Criteria/Rankings.** Any evaluation criteria, weighing of criteria or ranking is used by the City only as a tool to assist the City in selecting the most qualified Design Professional for this Project. Evaluation scores or ranks do not create any right in or expectation to a contract regardless of any score or ranking given to any Design Professional.

20. **Affirmative Action** It is the policy of the City that any person or entity entering into a contract with the City, will employ applicants and treat employees equally without regard to their race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age. Proposer will be required to comply with the City's Affirmative Action ordinance if Proposer is awarded a contract from the City totaling more than $300,000.00. If you have any questions regarding the City's Affirmative Action requirements, please contact HRD at (816) 513-1836 or visit the City's website at www.kcmo.org.

21. **Disadvantaged Business Enterprises (DBE) Program Requirements** To be eligible for this Contract, Proposer must (1) meet the qualifications of the FTA and (2) be certified and registered in the current DBE directory. For this Project the DBE goal is (**15.77%**). The DBE Forms and Instructions for Construction Projects are incorporated into these RFP Documents and the Contract Documents.

22. **Schedule of participating DBE's** By submitting its Proposal, Proposer is agreeing that for each DBE, the applicable value and percentage of labor, materials, and services involved in the Work as compared to the entire Contract price contained in this Proposal is set forth in the attached schedule of Participating DBE's submitted by Proposer.

23. **ADA Standards**. It is the policy of the City and required by law that any new or renovated facility meet the scoping and technical requirements of the 2010 ADA Standards for newly designed and constructed or altered local government facilities, public accommodations, and facilities. The selected Design Professional shall design the project so it conforms to the 2010 ADA Standards, as applicable and as amended from time to time, and is readily accessible to and usable by individuals with disabilities. The City will make available to the selected Design Professional the City's ADA Compliance Manager, who can facilitate interaction with advocates in the disability community.

24. **Pre-Proposal Conference**. A Pre-Proposal conference will be held on **March 27, 2019 at 9:00 am, by the Public Works Department held at the Health Department, Biery Auditorium Lower, 2400 Troost, Kansas City, Missouri.** Attendance at the Pre-Proposal conference is ***highly recommended*** but not mandatory for all Design Professionals.

25. **Questions.** Forward all questions in writing to the following Project Manager and Contract Administrator. Questions received less than **seven** (**7**) days prior to the Submittal Date may not be answered. Interpretations or clarifications considered necessary by the Project Manager in

response to such questions will be issued by Addenda to all Proposers. Oral or other interpretations or clarifications shall be without legal effect, even if made at a Pre-Proposal Meeting.

26. **Protests**. The following protest procedures will be employed for this procurement. For the purposes of these procedures, Sunday or legal holidays observed by City for such administrative personnel.

a. Pre-Submittal. A pre-submittal protest is received prior to the proposal date. Pre-submittal protests must be received by the City, in writing and addressed to the City's Manager of Procurement Services, City Hall, 414 E. 12th Street, 1st Floor, Room 102W Kansas City, Missouri, 64106, no later than five (5) days before the proposal closing date.

b. Post-Submittal/Pre-Award. A post-submittal/pre-award protest is a protest against making an award and is received after receipt of proposals but before award of a contract. Post-submittal protest must be received by the City, in writing and addressed to the City's Manager of Procurement Services, no later than five (5) days after the proposal closing date.

c. Post-Award. Post-Award protests must be received by the City, in writing and addressed to the City's Manager of Procurement Services, no later than five (5) days after the date of the Notice of Intent to Award.

d. The City's Manager of Procurement Services shall respond in writing within five (5) days from the date of the written request. If the protester is not satisfied with the response of the City's Manager of Procurement Services the protester may appeal in writing to the City's Director of General Services, City Hall, 414 E. 12th Street, 1st Floor, Room 102W Kansas City, Missouri, 64106, within five (5) days of the date from the City's Manager of Procurement Services' response.

e. The City's Director of General Services will decide if the protest and the appeal (if any) have been given fair and reasonable consideration, or if additional consideration is warranted. The City's Director of General Services' response will be provided within ten (10) days after receipt of the request. The City's Director of General Services' decision is final and no further action on the protest shall be taken by the City.

f. By written notice to all parties, the City's Manager of Procurement Services may extend the time provided for each step of the protest procedures, extend the date of notice of award, or postpone the award of a contract if deemed appropriate for the protest resolution.

g. Proposers should be aware of the Federal Transit Administration's protest procedures with the FTA Regional Office (ref: FTA Circular 4220.1F, dated November 1, 2008). If Federal funding is involved, FTA will review protests from a third party only when: 1) a grantee does not have a written protest procedure or fails to follow its procedure, or fails to review a complaint or protest; or 2) violations of specific Federal laws of regulations have occurred.

h. An appeal to FTA must be received by FTA's regional office within five (5) days after the date the protester learned or should have learned of an adverse decision by the City

or other basis of appeal to FTA. Protests shall be addressed to: Regional Administrator, FTA Region 7, 901 Locust, Room 404, and Kansas City, MO 64106.

Jason Waldron., Project Manager
Public Works Department
(816) 799-4792 Phone
E-mail: Jason.Waldron@kcmo.org

Darrell Everette, CPSM Procurement Manager
Procurement Services, General Services Department
414 East 12th Street, City Hall 1st Floor, Rm 102W
Kansas City, MO 64106
(816) 513-0798 Phone
(816) 513-2812 Fax
Email: Darrell.everette@kcmo.org

For persons with disabilities needing reasonable accommodations please contact Meg Conger at 816-513-6589. If you need to use the Relay Service, please dial 711.

Attachment A
Kansas City Streetcar Main Street Southern Extension

SCOPE OF SERVICES
Project No. 89022014-001

Project Background

The Kansas City Downtown Streetcar starter line went into service on May 6, 2016. The 2.2-mile line has provided more than 5 million trips in the 2+ years since opening day (over twice the projections). Due to overwhelming support and enthusiastic public interest in extending the streetcar route, the City of Kansas City, Missouri, the Kansas City Area Transportation Authority (KCATA), and the Kansas City Streetcar Authority (KCSA) have formed a Project Team to develop Federal Transit Administration (FTA) Section 5309 Capital Investment Grant Program – New Starts project justification materials and data in support of extending the streetcar system approximately 3.5 miles south from its current terminus. The proposed alignment would continue south along Main Street, ending at the Country Club Plaza/University of Missouri – Kansas City (Plaza/UMKC) area. The Main Street extension project would connect the City's two largest activity centers and would extend the community benefits already being seen from the Downtown Streetcar starter line. The expansion of streetcar in the Main Street corridor was identified and extensively studied in the NextRail KC study completed in 2013 (described below), and is included in the region's adopted long-range transportation plan, Transportation Outlook 2040. A request to enter Project development on the project was submitted to FTA by the project team and approved in December 2017. The Main Street extension was included in the RideKC Smart Moves 3.0 Transit and Mobility Plan for the Kansas City Region; and the Mid-America Regional Council (MARC) adopted the Locally Preferred Alternative into the regional Long-Range Transportation Plan on March 20, 2018.

In 2012 and 2013, the City of Kansas City, Missouri (KCMO), in coordination with KCATA, MARC, and Jackson County, initiated a $1.9 million planning study called NextRail KC to evaluate the potential impacts, feasibility, and cost of streetcar expansions in eight designated corridors. Through a phased process that included public/stakeholder engagement, systems overview, route screening, and detailed route analysis, the Main Street corridor streetcar extension, along with two others, was selected by the City Council for endorsement.

Completed and in progress documents and materials can be found on the KC Streetcar website at:

http://kcstreetcar.org/about-streetcar/mainstreet-extension/

General

The Consultant shall perform professional Engineering and Architectural services for the KC Streetcar Main Street Extension Project. The work includes Project Management, Engineering and Architectural designs, drawings, calculations, reports, schedules, and cost estimates necessary to complete the Federal Transit Administration (FTA) Project Development phase in the Capital Improvement Grant (CIG) process. Under this agreement the consultant's team shall perform Preliminary Engineering (PE) to a

level generally identified as the 30% design level. Actual design level completed shall be as necessary to develop Scope, Cost, Schedules and Project Management Plans detailed enough to meet FTA's requirements for submitting a request for project "Entry into Engineering".

Consultant's Final Design and Construction Services qualifications and capabilities shall be included in the evaluation for this contract. If the project receives the necessary approvals and funding and moves into the next Engineering phase, Final Design and Construction Services scope of work may be negotiated and amended to this contract at the discretion of the KC Streetcar Main Street Extension Management Team which includes representatives from the Kansas City Streetcar Authority (KCSA), Kansas City Area Transportation Authority (KCATA) and the City of Kansas City, Missouri (KCMO).

The Consultant will work under the direction of the KCMO Project Manager. The Consultant will be responsible for the communication and coordination throughout the entire Consultant team, and the production, approval, and finalization of all customary products necessary to complete Preliminary Engineering. The scope of services also includes coordinating with all other project Consultants under contract with the KCSA, KCATA, and KCMO including those separately contracted for environmental and vehicle services.

1. Project Management and Coordination Meetings

1.1 Consultant Project Management Plan

The Consultant will produce a Consultant Project Management Plan (C-PMP) to serve as a project management resource document for the Consultant team working on the Preliminary Engineering Phase of the Project. The document provides a basic structure for implementation of the most critical elements of project management including record keeping, documentation, communications, quality control and assurance, and delineates the Consultant organizational structure for the Project.

1.2 Monthly Reporting / Invoices

By the last business day of the month following the reporting period, the Consultant is required to submit comprehensive, up to date, monthly progress reports covering the work of the Consultant and all sub-Consultants, which contain the following elements:

A. Written Progress Report - A report describing work accomplished in the prior month and work planned for the upcoming month on a task basis consistent with the Summary of Hours by Task spreadsheet. This report will also include a narrative of deliverables; accomplishments; important meetings, current issues relating to the work including interfaces, budgets and schedules, proposed resolutions to mitigate the issues, and other project management issues.

B. Project Control Reports - Project control reports will be submitted with the monthly progress report and will contain the following items:

I. Summary of Hours by Task - The Consultant shall prepare and maintain a Task and Drawing Control Log covering significant tasks, specifications, reports and drawings

in an Excel format. This spreadsheet will be converted to the Summary of Hours by Task spreadsheet for monthly reporting.

II. **Schedule -** The Consultant will submit the project master schedule monthly, and highlight changes made to the schedule for approval by the KCMO Project Manager.

III. **Invoice -** An Invoice for Payment will be submitted with the monthly progress reports on the last business day of the month and will contain up to date information, including all sub-Consultants, for the following items:

- A graph showing planned cash flow projection and actual cash flow vs. time.
- A graph showing "as-planned hours", "actual hours", and "earned hours" vs. time.
- A table of budgeted average labor rates and current average labor rates per each firm, cumulative and for the month.
- A change control log of proposed, pending, and executed changes to the work.
- Summary of Dollars by Task. Dollar amounts may be adjusted by transferring budgeted amounts between tasks, with the approval of the KCMO Project Manager, without any adjustment to the Contract Price. Otherwise, task dollar amounts shall not be exceeded during the course of the work. If task amounts are exceeded, the Consultant bears full responsibility and risk for such expenditures. Task dollar amounts may be subject to modification through the change order process, but the change order must be executed prior to billing any amount that exceeds the original task amount.
- Summary of Dollars by Firm, including a table of the percentage of amounts paid to M/W/DBE firms.
- Employee name and rate for which reimbursement is being requested.
- Receipts, logs and invoices for other direct costs for which reimbursement is being requested.
- Establish activity definitions, duration, relationships, key milestones and contract interfaces.

1.3 Project Management Team

The City places a premium on the physical location of key consultant staff in the Kansas City area, both as a means of reducing project costs and to help ensure a thorough and integrated understanding of the project.

The Consultant will attend bi-weekly Project Management Team meetings, the primary purpose being to interface the work between Consultant teams, outside agencies and ongoing KC Streetcar activities. Each progress meeting will result in an Action Item Log that identifies required actions, due dates, and responsible parties. Action items should be tied to a scheduled item where possible.

The Consultant will prepare meeting minutes and the action logs for all meetings. These will be tracked to monitor progress and interfaces. Other, less formal meetings will be held on an as needed basis to coordinate the work or disseminate new information or direction.

1.4 Other Project Meetings

The Consultant shall attend other project meetings in a support or lead role under the direction of the KCMO Project Manager. These meetings shall include but are not limited to Executive Project Management Team Meetings, Technical Team Meetings, Stakeholder Team Meetings, and FTA sponsored meetings. The Consultant may be responsible for providing materials, minutes, agendas, etc.

1.5 Project Coordination

The Consultant shall coordinate with internal and external stakeholders, agencies, and organizations under the guidance of the KCMO Project Manager.

1.6 Quality Assurance Plan

The Consultant will produce a QA/QC Plan that identifies the interfaces between different design groups and design disciplines and identifies the responsibilities for both design performance and for QA. Quality-related design activity will be controlled in accordance with the QA/QC Plan.

1.7 Project Master Schedule

The Consultant shall support the continued development of a project master schedule and assist in ongoing schedule maintenance using software to develop, maintain and keep up-to-date the following:

- Accurate tracking of progress
- Identify Critical Path
- Resource allocation
- Identify progress for each assigned task
- Provide accurate information on project tasks, phases and milestones
- Establish activity definitions, duration, relationships, key milestones and contract interfaces

2. Public Involvement

The Consultant shall participate in and support public involvement activities, as needed, under the direction of the KCMO Project Manager. This task will be closely coordinated with KC Streetcar Main Street Extension Management Team staff. This shall include, but not be limited to, preparation of graphics, presentations, meeting minutes, newsletter articles, and participation as facilitators, scribes or other roles as required by Project Team staff. Communication efforts will be integrated into the existing communication platforms of KCSA, KCATA, and KCMO.

The Consultant will assist with stakeholder outreach to further refine the streetcar alignments from 45th and Main Street to 51st and Brookside Boulevard. The Consultant will also collaborate with the KCMO Waters Services Department (WSD) Main Street Water and Sewer Relocation Project communications team.

3. FTA Support Services

The Consultant shall participate in and support activities to complete applicable federal and FTA program requirements for Project Development and readiness to enter Engineering as found in FTA Oversight Procedure 51 – Readiness to Enter Engineering. The tasks of consulting services that may be needed for this phase may include, but are not limited to: project controls, QA/QC Plan, Safety and Security Management Plan, and risk assessment and mitigation.

4. Design Services

The Consultant shall perform services customary with the design development of a streetcar project through Project Development. This shall include but not be limited to track, stations, facilities, sitework, systems, property acquisition and any other pertinent project elements. The Consultant shall consider previous design efforts in the formulation of the response to this request and future design efforts.

4. 1 Design Criteria

Consultant shall review and recommend revisions to the KC Streetcar Design Criteria Manual. Current assumptions, policies, and procedures will be applied wherever possible in order to avoid duplication of effort and ensure consistency with the existing streetcar system. The Design Criteria will comply with all state, federal, and local rules and regulations. A technical report will be provided that summarizes all required and recommended changes to the Design Criteria.

4. 2 Aerial Photography & Survey

The Consultant shall provide aerial photography, topographic, planimetric and surveys, as required to complete PE.

4. 3 Geotechnical Analysis

The Consultant shall undertake a geotechnical investigation of the subsurface conditions to allow reasonable design decisions to be made about the type, configuration, and depths of structural foundations. The level of geotechnical analysis during PE should correspond to the goal of minimizing risk to project cost increases during Final Design.

4. 4 Preliminary Engineering

The Consultant shall develop engineering drawings, cost estimates, calculations, reports and other customary products consistent with 30% Engineering. The Consultant shall build-on previous work and develop drawings consistent with FTA Oversight Procedure 51 – Readiness to Enter Engineering. The Consultant shall follow all KCMO processes for managing the disposition of review comments. The Final PE Submittal shall be extended to an appropriate level to support the development of a reliable Baseline Cost Estimate prior to entrance into Final Design, as defined by the Federal Transit Administration. The Baseline Cost Estimate shall be used by FTA to fix the FTA share of the project cost and will need to be managed against during Final Design. All cost estimates shall be formatted in the FTA Standard Cost Category (SCC).

The Consultant shall build-on previous work to develop drawings as required. The designs should include, but not be limited to:

- Horizontal & Vertical Alignment Design (plan, profile, cross sections) – *Previous designs to be verified, refined, and utilized for design development of alignment drawings. This effort will include finalizing the alignment from 45th and Main Street to 51st and Brookside Boulevard.*
- Demolition – *Identify and describe all work required along the entire alignment.*
- Station Design (platform geometry, amenities, and landscaping) – *Station concepts to be consistent with existing streetcar system.*
- Roadway Design – *Preliminary cross section concepts to be developed.*
- Traffic Operations – *Perform any required traffic study and analysis to determine what modifications are needed to the existing network for streetcar operations.*
- Signing and Pavement Marking – *Determination of lane configurations, parking areas, turn movements and bicycle facilities.*
- Utility Design and Relocation (existing utility plans and relocation plans) – *Existing conditions work to be verified, refined and utilized for design development of relocation plans. Coordinate with KCMO WSD water and sewer main improvements in the corridor. Development of a database for the sharing of information and coordination of third-party utility companies.*
- Bridge and Structural Analysis – *Previous structural analysis to be reviewed and refined.*
- Drainage Design (grading, drainage area maps, station, and street drainage design) – *Drainage designs and drawings to be developed.*
- System Design (traction power, communication, train control, VMF modification, corrosion control) – *Systems designs and drawings to be developed. All systems must be compatible with the existing streetcar system. Preliminary substation locations will be identified.*
- Vehicle Maintenance Facility (VMF) Upgrade (VMF yard expansion, VMF Building design) – *Evaluate the capacity of existing facility and develop expansion concepts that will accommodate expanded services and fleet.*

All submittals will be accompanied by the appropriate and customary calculations, reports, and cost estimates commensurate with the level of design of the particular milestone. Documents will be submitted to KCMO in accordance to approved QA/QC plan.

4. 5 Preliminary Hazard Analysis

The Consultant will complete a Preliminary Hazard Analyses (PHA) prior to the completion of Preliminary Engineering under direction of KC Streetcar Safety and Security. The PHA will identify major hazards and their implications on safety of the streetcar system, and develop preliminary mitigations for the hazards.

4. 6 Project Reviews

The Consultant will also participate in FTA suggested reviews, such as Value Engineering, Peer Reviews, Risk Assessment, and other reviews as directed by the KCMO Project Manager. These reviews will take place during PE and will comply with all FTA guidance.

4. 7 Safety & Security Certifiable Items List

The A/E Consultant shall prepare a Safety & Security Certifiable Items List in compliance with and in reference to NFPA 130, ADA, OSHA, and any other applicable safety and security standard or regulation, in the Safety and Security Certifiable Items List (CIL), as required by FTA.

5. Transit Operations Planning

A preliminary operating plan was developed in the Project Development phase. Consultant shall develop a refined operations plan in conjunction with the Management Team that reflects final station locations, final alignment, operating schedules, and cost estimates associated with operations.

6. Environmental Studies

Consultant team will assist and perform any supplemental environmental documentation necessary to advance that project through the federal process and secure entry into Engineering.

7. Additional Services

Consideration will be given to the project team's ability to demonstrate/perform the additional services described below.

7.1 Final Design

The scope of these services involves further developing the Preliminary Engineering Design and Plans into Final Plans, Specifications and Estimates.

The categories of consulting services that may be needed for this phase may include, but are not limited to: project management, civil and track engineering, systems engineering, rail operations planning, environmental support services, surveying and base mapping, traffic and signals, utility coordination, structural, geotechnical, architecture, electrical engineering, lighting, landscape/urban design, project delivery analysis, ridership forecasting, cost estimating, specifications, construction assessment, and community outreach.

7.2 Construction Services

The scope of these services involves support services during the Construction Phase of the project.

The categories of consulting services that may be needed for this phase may include, but are not limited to: construction management, submittal review, requests for information review,

independent cost estimating, QA/QC support, change order review, field engineering, utility and third-party coordination, inspections and observation, document control, design support, and community outreach.

SEE REQUIRED FTA REVISIONS TO BE ADDED TO CITY STANDARD DOCUMENTS.

NOTE: THE LAW DEPARTMENT HAS APPROVED THE FOLLOWING BOILERPLATE. THIS BOILERPLATE CONTAINS CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED INFORMATION. DO NOT DISTRIBUTE THIS DOCUMENT TO THE DESIGN PROFESSIONAL OR THE PUBLIC UNLESS ALL "NOTES" AND PARAGRAPHS WITH SPECIFIERS ARE REMOVED.

Notes and section choices have been provided to assist you in customizing this document. Only those deletion choices provided have prior approval of the Law Department. If this boilerplate does not meet your contracting need or you have any questions regarding its use, contact the Law Department. Be certain to delete this note before you provide a copy of the document to the Design Professional or the public. This document is intended for review by City staff only.

DESIGN PROFESSIONAL SERVICES AGREEMENT

PROJECT NO. ____ - _____

FTA Grant No. _____

_____ DEPARTMENT

This design professional services agreement is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation ("City"), and _____ ***[Note: Enter the type of business entity following the name of the Design Professional. Use one of the following examples: Missouri Corporation; Foreign Corporation; Fictitious Name Registration; Sole Proprietor; Limited Liability Company; Partnership; Joint Venture; Other (Specify)]*** ("Design Professional"). City and Design Professional agree as follows:

PART I

SPECIAL TERMS AND CONDITIONS

Note: *Describe the general scope of project. Be certain to delete this note and the non-applicable section before your final Agreement document is printed.*

Sec. 1. Project description.

A. The services to be provided under this Agreement are for the following project (Project) and purpose:

Note: *Insert detailed specifications of services in the following section. List each specification as a separate item number. If the Scope of Services that Design Professional will perform does not exceed one-half page, put the Scope of Services here using Subsection A. If the Scope of Services is longer, attach it as Attachment __ and use the following language for Subsection A: "Design Professional shall perform the Scope of Services listed on Attachment __." (Bold references to attachments.) Insert time deadlines, milestone dates, benchmarks, durations, or fast track scheduling as appropriate for each task listed in the Scope of Services. Insert language regarding the electronic format requirements as an Attachment.*

Sec. 2. Services to be performed by Design Professional. Design Professional shall perform the following Scope of Services:

A. ***(List Scope of Services)***

B. Submit all documents, including plans, design drawings, specifications, reports, maps, models and renderings in the form requested by City. A list with the specific requirements is included in **Attachment _____.**

C. City shall have the right to inspect and review the work being done and to consult with Design Professional at any reasonable time. Conferences will be held at the request of City or Design Professional.

D. If it is determined to be in the best interest of the work, Design Professional shall replace the project manager or any other employee of the Design Professional, Subcontractors, Suppliers or other persons or organizations performing or furnishing any of the work on the project upon written request by the City.

E. City's General Conditions shall be furnished to Design Professional prior to signing this Agreement. If the General Conditions are modified, City will notify Design Professional. If the Scope of Services performed by Design Professional under this Agreement includes construction phase services, then Design Professional shall perform such additional tasks set forth in the General Conditions, including approval of Change Orders, and shall comply with the limitations set forth in the General Conditions, except as otherwise amended.

Sec. 3. Term. Unless sooner terminated as provided herein, and unless specific dates for providing services are identified in this Agreement, this Agreement shall remain in force for a period which may reasonably be required for the completion of the services to be provided by Design Professional under the Scope of Services. Work under this agreement shall begin upon written Notice to Proceed.

Sec. 4. Compensation and Reimbursables.

A. The maximum amount that City shall pay Design Professional under this Agreement is $_____, as follows:

1. $_____ for the services performed by Design Professional under this Agreement.

2. For Design Professional services described in the Scope of Services, City shall pay Design Professional compensation amounting to actual salary of personnel for time charges directly to the project, times an approved multiplier. The multiplier to be used is _____. A schedule of position classifications and the salary range for each position is included as a part of **Attachment _____.**

Note: *List reimbursable expenses, if any, allowed under this Agreement. Be certain to delete this note before your final Agreement document is printed.*

a. Actual reasonable expenses incurred by Design Professional directly related to Design Professional's performance under this Agreement, to include only the following, in an amount not to exceed $_____. The following are the reimbursable expenses that City has approved: $_____.

b. City is not liable for any obligation incurred by Design Professional except as approved under the provisions of this Agreement.

Note: *Per hour basis – Indicate whether City is to be invoiced weekly, biweekly, monthly, quarterly, semiannually, or annually. If this contract is subject to the SLBE program, the contract should provide for payments to be made every two weeks. Be certain to delete this note before your final Agreement document is printed.*

3. Method of Payment.

B. Design Professional shall invoice City _____ setting forth the total effort expended on an hourly basis and all actual reasonable expenses incurred and allowed under this Agreement. City, upon approving the invoice, shall remit payment.

OR

Note: *Task completion basis - List the amount to be paid for each particular task performed under this Agreement not to exceed the amount in this attachment. Be certain to delete this note before your final Agreement document is printed.*

C. **Method of Payment**. Upon completion of each task set forth below Design Professional shall invoice City, stating completion of the task and all actual reasonable expenses incurred and allowed under this Agreement and the amount due. City, upon approving the invoice, shall remit payment.

D. $_____ upon completion of _____.

OR

Note: *Service completion basis - List the amount to be paid for each particular service performed under this Agreement not to exceed the amount in this attachment. If this contract is subject to the SLBE program, the contract should provide for payments to be made every two weeks. Be certain to delete this note before your final Agreement document is printed.*

E. **Method of Payment**. Upon completion of the services performed under the Agreement Design Professional shall invoice City, stating completion of the services and all actual reasonable expenses incurred and allowed under this Agreement and the amount due. City, upon approving the invoice, shall remit payment.

F. $_____ upon completion of _____.

OR

Note: *Installment basis for Agreement where Design Professional is paid set amount and paid monthly, etc. regardless of work performed – Indicate whether City is to be invoiced weekly, biweekly, monthly, quarterly, semiannually, or annually. If this contract is subject to the SLBE program, the contract should provide for payments to be made every two weeks. Be certain to delete this note before your final Agreement document is printed.*

G. **Method of Payment**. Design Professional shall invoice _____ for actual services performed under this Agreement and all actual reasonable expenses incurred and allowed under this Agreement. Upon approving the invoice, City shall remit $_____ plus the amount of approved actual reasonable expenses.

H. Condition Precedent to Payment.

I. It shall be a condition precedent to payment of any invoice from Design

Professional that Design Professional is in compliance with, and not in breach or default of, all terms, covenants and conditions of this Agreement. If damages are sustained by City as a result of breach or default by Design Professional, City may withhold payment(s) to Design Professional for the purpose of set off until such time as the exact amount of damages due City from Design Professional may be determined, and

J. No request for payment will be processed unless the request is in proper form, correctly computed, and is approved as payable under Agreement. City is not liable for any obligation incurred by Design Professional except as approved under the provisions of this Agreement.

K. No request for payment will be processed unless it is accompanied by a copy of the most recent 00485.01 M/WBE Monthly Utilization Report submitted to the City's Human Relations Department.

***Note**: If this is a SLBE Project add the following following paragraph. Include the amount of the pre-payment authorized; it may not exceed ten percent (10%). Be certain to delete this specifier before the final Document is printed.*

L. City may pre-pay Contractor _____% of the Contract amount without Contractor having to submit a request for payment.

Sec. 5. Notices. All notices required by this Agreement shall be in writing and sent to the following:

City:

_____ Department

_____, Director:

Address: _____,

Kansas City, MO _____

Phone: (____) _____-_____ Facsimile: (____) _____-_____

E-mail address:_____

Design Professional:

_____

Contact: _____

Address: _____

Phone: (____) _____-____ Facsimile: (____) _____-_____

E-mail address: _____

All notices are effective (a) when delivered in person, (b) upon confirmation of receipt when transmitted by facsimile transmission or by electronic mail, (c) upon receipt after dispatch by registered or certified mail, postage prepaid, (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) business days after the date of mailing, whichever is earlier.

Sec. 6. Merger. This Agreement consists of Part I, Special Terms and Conditions and any Attachments and any documents incorporated by reference; and Part II, Standard Terms and Conditions. This

Agreement, including any Attachments and incorporated documents, constitutes the entire agreement between City and Design Professional with respect to this subject matter.

Sec. 7. Conflict Between Agreement Parts. In the event of any conflict or ambiguity between the Special Terms and Conditions of Part I and the Standard Terms and Conditions of Part II of this Agreement, Part I will be controlling.

Note: *Below are some responsibilities sometimes included in design professional agreements. If "Responsibilities of City" is not applicable to your Agreement delete the following section. If the City has responsibilities in this Agreement, insert detailed responsibilities of the City. List each responsibility as a separate item number. If the City's responsibilities exceed one-half page, add it as an attachment; if one-half page or less, insert City responsibilities here in Part I.*

Sec. 8. Responsibilities of City. City shall:

A. Make available to Design Professional all existing records, maps, plans, and other data possessed by City when such are necessary, advisable, or helpful to Design Professional in the completion of the work under this Agreement.

B. If required or upon recommendation of Design Professional, retains the services of a soils/geotechnical consultant.

C. Designate in writing a person to act as City representative with respect to the work to be performed under this Agreement; with such person having complete authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to the materials, equipment elements and systems pertinent to the work covered by this Agreement, and the responsibility to be available to inspect and review the work and to consult with Design Professional at any reasonable time.

D. Provide standard City forms as required.

E. Provide City – Licensed Geographical Information System Data set forth in **Attachment ___,** incorporated into this Agreement.

Note: *List all attachments you are including in Part I and the name of the Attachment in the section below. Example: "Attachment 1: Scope of Services". Be sure to check your numbering. If you have no attachments, delete the following section.*

Sec. 9. Attachments to Part I. The following documents are attachments to Part I of this Agreement and are attached hereto and incorporated herein by this reference:

A. Attachment A – Scope of Services
B. Attachment B - Electronic Format Requirements and Naming Conventions
C. Attachment C - Section 00700 Construction General Conditions
D. Attachment D – Schedule of Position Classifications and Hourly Rates
E. Attachment E - Non-Construction Application for Payment Form
F. Attachment F - City - Licensed Geographical Information System Data
G. Attachment G - Survey Standard for Design Surveys (Optional Dependent on Scope)
H. Attachment H - City Right-of-Way Standard (Optional Dependent on Scope)
I. Attachment I - Non-Construction Subcontractors Listing
J. Attachment J – FTA 00486 DBE Program
    1. FTA 00486.02 DBE Contractor Utilization Plan/Request for Waiver
    2. FTA 00486.01 DBE Letter of Intent to Subcontract

SEE REQUIRED FTA REVISIONS TO BE ADDED TO CITY STANDARD DOCUMENTS.

3. FTA 00486.03 DBE Request for Modification, Replacement or Termination
4. FTA 00486.04 Subcontractor Monthly Utilization Report
5. FTA 00486.05 Schedule of Participation by Contractor & Sub-Contractor

K. Attachment K – Federal Transit Administration (FTA) Requirements

1. FTA 00487.01 – Affidavit of Primary Participants
2. FTA 00487.02 - Affidavit of Lower-Tier Participants – Employee Eligibility Verification
3. FTA 00488.01 – Certification of Primary Participants Regarding Debarment
4. FTA 00488.02 - Certification of Lower Tier Participants Regarding Debarment
5. FTA 00489.01 - Certification of Primary Participants Regarding Restrictions on Lobbying
6. FTA 00489.2 – Certification of Lower Tier Participants Regarding Restrictions on Lobbying
7. FTA 00492 – Anti-collusion Statement

Note: *The following paragraph should be included for projects being processed in e-Builder. Delete this paragraph in its entirety if it is not applicable. Be certain to remove this note before your final Contract Document is printed.*

Sec. 10. Contract Information Management System. Design Professional shall comply with City's Contract Information Management System requirements. Design Professional shall use City's Internet web based Contract Information Management System/Project Management Communications Tool provided by City and protocols included in that software during the term of this Contract. Design Professional shall maintain user applications to City's provided system for all personnel, subcontractors or suppliers as applicable.

Note: *The section below "Documents Incorporated by Reference" should be used if you are want a document to be part of this Agreement but you do not want to actually attach the document to this Agreement. For example, the document may have many pages. You can list this document here but you must very specifically identify the document including its name and, if it is dated, the date of the document. If you do not use the following section, delete it.*

Sec. 11. Documents Incorporated by Reference. The following documents are not attached to this Agreement but are incorporated into and made a part of this Agreement by this reference:

A.

Note: *If Contractor has notified City that it will use Subcontractors, provide "Subcontractor List Non-Construction" to Contractor.*

Sec. 12. Subcontracting. Design Professional agrees that it will only subcontract with the subcontractor(s) it has listed on the "Subcontractor List Non-Construction."

Note: *The sections contained in Part II are standard contract provisions that, except for some rare exceptions, should not be deleted. If you receive inquiries regarding the deletion of any of these sections consult with the Law Department. If you have appropriate approval to do so, list the number and name of those sections in the following section. Be certain to delete this note before you provide a copy of the document to the Design Professional.*

Sec. 13. Deletions to Part II, Standard Terms and Conditions. The following sections of Part II,

Standard Terms and Conditions, of this Agreement are hereby deleted:

A.

Note: *The sections contained in Part II are standard contract provisions that, except for some rare exceptions, should not be modified. If you receive inquiries regarding modifications to any of these sections consult with the Law Department. If the City agrees to modify or change any language in any Section in Part II, use the following section and completely recite the new section language. Be certain to delete this note before you provide a copy of the document to the Design Professional.*

Sec. 14. Replacements to Part II, Standard Terms and Conditions. The following section(s) of Part II, Standard Terms and Conditions of this Agreement are hereby deleted and in lieu thereof, the following are hereby inserted:

A.

Note: *The determination of minimum acceptable limits of insurance should be made on a project-by-project basis after performing an analysis of the potential liability risks presented by the size and type of the project. You must consult with the City's Risk Manager to determine whether the standard liability limits should be increased to a specific new limit if the estimated costs of the project exceed $3,000,000.00 or if the project is particularly complex or presents unique architectural or engineering difficulties. If the contract is funded in whole or in part with funds administered through the Missouri Department of Transportation (MoDOT), you MUST increase the Commercial General Liability Insurance and Commercial Automobile Liability insurance as indicated below. Delete any portion of this Section which are not applicable to your contract. Be certain to delete this note before you provide a copy of the document to the Design Professional.*

Sec. 14. Additions to Part II, Standard Terms and Conditions.

B. **Section 1, General Indemnification**. Add the following Subparagraph C.1:
   1. Design Professional shall defend, indemnify and hold harmless the Federal Transit Administration (FTA), Downtown Transportation Development District (TDD), Kansas City Streetcar Authority (KCSA) and the Project Management Oversight Consultant (PMOC) - Kansas City Area Transportation Authority (KCATA) and each of their respective employees from and against all Claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by Design Professional or Design Professional's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of City. Design Professional's obligations under this subparagraph shall be limited to the coverage and limits of insurance that Design Professional is required to procure and maintain under this Contract. Design Professional affirms that it has had the opportunity to recover the costs of the liability insurance required in this Contract in its contract price.

C. **Section 3, Insurance** Add the following paragraph B.1:
   1. With respect to Commercial Automobile Liability Insurance and Commercial General Liability Insurance, the Federal Transit Administration (FTA), Downtown Transportation Development District (TDD), Kansas City Streetcar Authority (KCSA) and the Project Management Oversight Consultant (PMOC) - Kansas City Area Transportation Authority (KCATA) and each of their respective employees shall be listed as additional insureds.

Sec. 15. Replacement to Part II, Standard Terms and Conditions, Section 3, Insurance.

SEE REQUIRED FTA REVISIONS TO BE ADDED TO CITY STANDARD DOCUMENTS.

A. Section 3, Paragraph A.1 of Part II, Standard Terms and Conditions of this Agreement is hereby deleted and in lieu thereof, the following is inserted:

B. Commercial General Liability Insurance: with limits of $3,000,000 per occurrence and $3,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

   a. Severability of Interests Coverage applying to Additional Insureds

   b. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be $3,000,000

   c. No Contractual Liability Limitation Endorsement

   d. Additional Insured Endorsement, ISO form CG20 10, or its equivalent

C. Section 3, Paragraph A.3, of Part II, Standard Terms and Conditions of this Agreement is hereby deleted and in lieu thereof, the following is inserted:

   (1) Commercial Automobile Liability Insurance: with a limit of $3,000,000 written on an "occurrence" basis, covering owned, hired, and non-owned automobiles. If the Design Professional owns vehicles, coverage shall be provided on an "any auto" basis. If the Design Professional does not own any vehicles, coverage shall be provided on a "hired autos" and "nonowned autos" basis. The insurance will be written on a Commercial Business Auto form, or an acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Agreement, by Design Professional.

D. Section 3, Paragraph A.4, of Part II, Standard Terms and Conditions of this Agreement is hereby deleted and in lieu thereof, the following is inserted:

   1. Professional Liability Insurance with limits Per Claim/Annual Aggregate of $_____.

Note: *The following paragraph should be included for projects being processed in e-Builder. Delete this paragraph in its entirety if it is not applicable. Be certain to remove this note before your final Contract Document is printed.*

Sec. 16. Contract Information Management System. Design Professional shall comply with City's Contract Information Management System requirements. Design Professional shall use City's Internet web based Contract Information Management System/Project Management Communications Tool provided by City and protocols included in that software during the term of this Contract. Design Professional shall maintain user applications to City's provided system for all personnel, subcontractors or suppliers as applicable.

Note: *The following section relates to programs funded in whole or in part by federal or state funds. List all requirements that apply to this Agreement and fill in the attachment number. If this Agreement is not funded by federal/state grant funds or this section does not apply to your contact, "delete this section". Be certain to delete this note and the non-applicable section before your final agreement document is printed.*

Sec. 17. Incorporation of The Federal Transit Administration Required Contract Provisions.

A. **No Government Obligation to Third Parties**

1. **No Obligation by the Federal Government.**

   a. City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

   b. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

B. <u>Program Fraud and False or Fraudulent Statements and Related Acts</u>

1. **Program Fraud and False or Fraudulent Statements or Related Acts.**

   a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

   b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

   c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

C. <u>Access to Records and Reports</u>

1. **Access to Records -** The following access to records requirements apply to this Contract:

   a. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any

books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

b. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000.

c. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

d. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

e. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

f. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

D. <u>Federal Changes</u>

1. **Federal Changes -** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed

directly or by reference in the Master Agreement between City and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

E. Termination

1. **Termination for Convenience (General Provision)** The City may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to City to be paid the Contractor. If the Contractor has any property in its possession belonging to the City, the Contractor will account for the same, and dispose of it in the manner the City directs.
2. **Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.
3. If it is later determined by the City that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the City, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

F. Civil Rights Requirements

1. **Civil Rights.** The following requirements apply to the underlying contract:
   a. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
   b. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract
      (1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal

Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

c. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

d. The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

G. <u>Disadvantaged Business Enterprises (DBE)</u>

1. **Disadvantaged Business Enterprises (DBE).** The City of Kansas City, Missouri shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation

of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases; refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

2. The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate**.**

3. The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 15 days from the receipt of each payment the prime contract receives from KCMO. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the KCMO. This clause applies to both DBE and non DBE subcontracts.

4. The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, or national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

H. <u>Incorporation of Federal Transit Administration (FTA) Terms</u>

1. **Incorporation of Federal Transit Administration (FTA) Terms -** The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause City to be in violation of the FTA terms and conditions.

I. <u>Conflicts of interest (Organizational)</u>

1. In accordance with 2 C.F.R § 200.112, the Contractor certifies that it has no other activities or relationships that would make the Contractor unable, or potentially unable, to render impartial assistance or advice to The City of Kansas City Missouri, or that would impair the Contractor's objectivity in performing work under the Contract, or that would result in an unfair competitive advantage to Contractor or to another third party performing the Project work.

Note: *The following paragraph is applicable if contract is greater than $25,000. Delete this paragraph if not applicable.*

J. Government-Wide Debarment and Suspension

1. **Suspension and Debarment**. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.
2. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.
3. The Certification of Primary Participant Regarding Debarment, Suspension, and Other Responsibility Matters executed by Contractor is a material representation of fact relied upon by City. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Note: *The following paragraph is applicable if contract is greater than $100,000. Delete this paragraph if not applicable.*

K. Breaches and Dispute Resolution

1. **Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized signatory representative of the City. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Manager of Procurement Services. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Manager of Procurement Services shall be binding upon the Contractor and the Contractor shall abide be the decision.

Note: *The following paragraph is applicable if contract is greater than $100,000. Delete this paragraph if not applicable.*

L. Lobbying

1. **Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]**
   a. Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying."
   b. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

c. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

d. Certification required.

Note: *The following paragraph is applicable if contract is greater than $100,000. Delete this paragraph if not applicable.*

M. Clean Air Requirements

1. **Clean Air**

a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

b. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

Note: *The following paragraph is applicable if contract is greater than $100,000. Delete this paragraph if not applicable.*

N. Clean Water Requirements

1. **Clean Water**

a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

b. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

Note: *The following paragraph is only applicable if contract involves foreign air transportation/travel. Delete this paragraph if not applicable.*

O. Fly America Requirements

1. **Fly America Requirements -** The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a

foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Note: *The following paragraph is only applicable if contract is for AE for new building &/or additions. Delete this paragraph if not applicable.*

P. Seismic Safety Requirements

1. **Seismic Safety** - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

Note: *The following paragraph is only applicable if contract involves experimental, developmental or research work. Delete this paragraph if not applicable.*

Q. Patent Rights and Rights in Data

1. **Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:

   a. General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

   b. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

   c. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

Note: *The following paragraph is only applicable if contract involves experimental, developmental or research work. Delete this paragraph if not applicable.*

R. Rights in Data

SEE REQUIRED FTA REVISIONS TO BE ADDED TO CITY STANDARD DOCUMENTS.

1. **Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

   a. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

   b. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

      (1) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

      (2) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

         (a) Any subject data developed under that contract, whether or not a copyright has been obtained; and

         (b) Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

      (3) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work,

which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(4) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(5) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(6) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(7) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

c. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

d. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

S. Energy Conservation Requirements

1. **Energy Conservation** - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

T. ADA Access.

1. **DOT Public Transportation Regulations implementing Section 504 and the ADA**.

   a. Contract must comply with DOT Public Transportation Regulations implementing Section 504 and the ADA. These regulations include DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27, DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37, and Joint Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Examples of requirements include, but are not limited to, the following:

   (1) Design and Construction. Accessibility requirements for the design and construction of new transportation facilities;

   (2) Accessibility and Usability. Requirements that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;

   (3) Complementary Paratransit Service. Requirements that public entities providing fixed-route service, (including a private non-profit entity providing public transportation service on behalf of the State or designated recipient as a subrecipient providing fixed-route service), provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service;

   (4) Equal Opportunity. Requirements for compliance with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services.

   (5) Procurement. Acquisition of rolling stock in compliance with must comply with the accessibility requirements of DOT regulations.

U. Privacy Act

1. **Contracts Involving Federal Privacy Act Requirements.** The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

   a. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the

underlying contract.

b. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

V. <u>Prompt Payment</u>

1. Prime Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract no later than 15 days from the receipt of each payment the prime Contractor receives from the City. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City.

Note: *The following paragraph is only applicable for ITS projects. Delete this paragraph if not applicable.*

W. <u>National Intelligent Transportation Systems Architecture and Standards</u>

1. The Contractor agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and Contractor agrees to comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" *66 Fed. Reg. 1455*, January 8, 2001, and any further implementing directives, except to the extent FTA determines otherwise in writing.

Note: *If the contract is for the professional services of an architect, engineer, or other professional, the following language should be inserted into the contract.*

Sec. 18. Professional services certification. Code Section 2-83, prohibiting Agreements with certain attorneys, architects, engineers and other professionals thereunder, shall apply to this Agreement. Design Professional certifies that it is not an architect, engineer, or other professional, exclusive of medical doctors or appraisers, who at the time of the issuance of the Agreement, serves as an expert witness for any litigation against City, and that it will not serve as an expert witness for any litigation against City during the term of this Agreement.

OR

Note: *If this Agreement is funded by federal or state programs, you must obtain certification from Design Professional that they are not debarred. Obtain the Certification form from Contract Central Section "Grant". See "Contract Suspension and Debarrment Clearance Instructions" in Contract Central Section "Grant". Contact the Law Department if you have any questions regarding this attachment. Be certain to delete this note and the non-applicable section before your final Agreement document is printed.*

Note: **Please read and delete the following Notes before finishing this Agreement.**

Note: *Bold Attachments. Be sure that any reference to an attachment is in bold print. This will help us easily locate references to attachments in this Part I.*

Note: *Paragraph Numbers. Be sure to check the numbering of your paragraphs. The optional paragraphs do not contain a number so you must insert the proper paragraph number.*

SEE REQUIRED FTA REVISIONS TO BE ADDED TO CITY STANDARD DOCUMENTS.

Note: *Attachment Numbers. Be sure to check the numbering of your attachments. If you have not used some attachments, your numbering may be incorrect.*

Note PART II: *STANDARD TERMS AND CONDITIONS: Print and Attach the Standard Terms and Conditions to this Document after you print this document. Each copy of the Agreement needs this document, the Standard Terms and Conditions and any Attachments.*

Note: *Approval to Waive/Modify Other Sections. Some provisions of Part II may be waived or modified, but you must first contact the Law Department and obtain the proper approvals.*

Note: *Deletions/Replacements. If you have waived or modified any provisions in Part II, make sure you have listed those in the "Deletions to Part II" or "Replacements to Part II" Sections Part I*

Note: *Do Not Attach the following documents to the Agreement: certificate of compliance with affirmative action; taxpayer clearance letter; Certification on Design Professional debarment. Place these documents in the Agreement file.*

Note: *Do not delete this warning on indemnification.*

Sec. 19. Effectiveness; Date. This Agreement will become effective when the City's Director of Finance has signed it. The date this Agreement is signed by the City's Director of Finance will be deemed the date of this Agreement.

Each party is signing this Agreement on the date stated opposite that party's signature.

SEE REQUIRED FTA REVISIONS TO BE ADDED TO CITY STANDARD DOCUMENTS.

THIS AGREEMENT CONTAINS INDEMNIFICATION PROVISIONS

DESIGN PROFESSIONAL

I hereby certify that I have authority to execute this document on behalf of Design Professional

Date:_____ By: _____

Name: _____

Title: _____

KANSAS CITY, MISSOURI

Date:_____ By: _____

Name: _____

Title: _____

Approved as to form:

_____

Assistant City Attorney

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the Treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

_____

Director of Finance Date

SEE REQUIRED FTA REVISIONS TO BE ADDED TO CITY STANDARD DOCUMENTS.

ATTACHMENT ___

CITY – LICENSED GEOGRAPHICAL INFORMATION SYSTEM DATA

CITY will provide licensed materials for Geographical Information Systems to be used for the project as follows:

Grant of License. CITY grants to DESIGN PROFESSIONAL and DESIGN PROFESSIONAL hereby accepts, upon the express terms and conditions contained in this Agreement, a non-exclusive License to use the information described herein in the form produced and maintained by the Geographical Information System produced and maintained by City.

License Materials. The materials licensed for use by DESIGN PROFESSIONAL under this Agreement are the forms which can be read or manipulated by computer of the geographical and physical characteristic information collected and assimilated in the records of City ("Licensed Materials").

Use of Licensed Materials. Subject to the terms, conditions and prohibitions of this Agreement, DESIGN PROFESSIONAL shall be entitled to use the information contained in the Licensed Materials to accomplish the scope of services provided by DESIGN PROFESSIONAL. At the completion of the Agreement, DESIGN PROFESSIONAL shall return all materials to the CITY, and shall permanently remove the Licensed Materials from any media used by DESIGN PROFESSIONAL. At the end of the Agreement, DESIGN PROFESSIONAL shall provide a written certification that all materials are returned and that all Licensed Materials, including copies, have been removed from the equipment or media of DESIGN PROFESSIONAL.

Transfer of Licensed Materials. This license is expressly nontransferable and DESIGN PROFESSIONAL shall not transfer any interest, entitlement or obligation under this Agreement to any other person or entity.

Data. The data and information contained in the Licensed Materials shall be those files and systems as recorded and existing as of the time DESIGN PROFESSIONAL requests the information.

Title. The custody and title and all other rights and interests in the Licensed Materials are and shall at all times remain with the CITY and with the Offices or officials of the CITY having official custody of the Licensed Materials.

Not Public Records. The database in the form of the Licensed Materials is proprietary, intellectual property of the CITY and shall not be considered or deemed as open, public records, except as provided in §256.670, RSMo. DESIGN PROFESSIONAL shall and hereby expressly agrees that it will, recognize the property interests of CITY and CITY agrees that it is not, pursuant to this License, a custodian of any open, public records, except as may exist pursuant to §256.670 RSMo.

SEE REQUIRED FTA REVISIONS TO BE ADDED TO CITY STANDARD DOCUMENTS.

Access to Materials. Pursuant to the terms and conditions of this agreement, DESIGN PROFESSIONAL shall be provided access to obtain the Licensed Materials in a periodic basis for the term of this Agreement. As provided in this Agreement, DESIGN PROFESSIONAL, shall be entitled to any Modifications, updates, renewals or additional data or information under the License granted by this Agreement.

Updated Material and Modifications. CITY shall in accordance with this Agreement and upon request of the DESIGN PROFESSIONAL provide to DESIGN PROFESSIONAL updates to or modifications of all or any specific parts of the data or information in the Licensed Materials. Any such updates or modifications provided by CITY shall be covered by and subject to each and all of the terms and conditions of this Agreement. Furthermore, upon completion or termination of this Agreement, DESIGN PROFESSIONAL, will provide to CITY in a compatible form, updated information developed during the execution of the Scope of Services provided by DESIGN PROFESSIONAL.

Data Contents. The data contained in the materials licensed by CITY to DESIGN PROFESSIONAL under this Agreement shall include that information necessary to allow DESIGN PROFESSIONAL to perform scope of services outlined in the Agreement.

Waiver. The waiver of any breach of any provision of this license shall not constitute a waiver of any subsequent breach of the same or other provisions of the Agreement.

Modifications. Any modification to the rights provided herein for licensed materials shall be in writing executed by each party.

SEE REQUIRED FTA REVISIONS TO BE ADDED TO CITY STANDARD DOCUMENTS.

ATTACHMENT ____

ELECTRONIC DATA REQUIREMENTS

A. Kansas City Plan Room - Electronic Format Requirements and Naming Conventions

1. In addition to other deliverables included in this Contract, items listed below are requirements to accommodate posting bids documents, plans and specifications on the Kansas City Plan Room.
2. Prime Design Professional/Consultant and Sub-Consultants shall adhere to the following electronic format requirements and use the naming conventions as set out below:
   a. **Drawings/plans**
      (1) Drawings/plans should be rendered as 200-300 dpi **PDF Format** images. No files may be larger than 5 megabytes in size. Plans/Drawings numbering should follow Form 00015 List of Drawings.
      (2) File names may not include any symbols such as **< > : . " / \ | ? ' & # % ^ * ( ) [ ] { } +**
      (3) FILE NAMES: Plans/Drawings numbering should follow Form 00015 List of Drawings. All plans should be named in the following manner: three digit sequential number-brief descriptor. For example: 001-Cover.**pdf** or 002-arc1.**pdf**
   b. **CSI specification sections (project manuals)**
      (1) CSI specification sections should be named by division, using DIV as a prefix. For example:
         (a) DIV01.PDF (Technical, Project Specific)
         (b) DIV02.PDF
         (c) DIV03.PDF
   c. Summary:
      (1) Division 00 and 01 in Microsoft Word or Excel
      (2) Division 2-16 in PDF Format
      (3) Completed document originals of Plans and Diagrams of project must be submitted as 200-300 dpi **PDF Format** images.

Note: *The following remaining sections should be included for projects being processed in e-Builder. Delete these sections in their entirety if they are not applicable. Be certain to remove this note before your final Contract Document is printed.*

B. General Requirements

1. Professional Services Consultant/Contractor and its Sub-Consultant/Contractor(s) shall provide at a minimum, the following to its staff:
   a. **Computer**: Minimum Intel Pentium® 4 Processor 2.4 GHz or equivalent processor with 512MB of RAM; recommended Centrino Duo® Processors 1.6 GHz or equivalent with 2GB of RAM, or higher.
   b. **Computer Operation System**: Windows XP, Windows Vista, or Windows 7
   c. **Web Browser**: Microsoft Internet Explorer 9
   d. **Work and Spreadsheet Processors**: Microsoft Office Word, Excel and Outlook
   e. **Scheduling Software**: Microsoft Project or Primavera
   f. **Internet Service Provider**: A reliable ISP in the area of the Project
   g. Connection Speed/Minimum Bandwidth: DSL, ADSL or T1 Line for transferring a minimum of **3 Mbps** Downstream **and 512 Kbps** Upstream

C. Contract Information Management System - Project Web Requirements

1. The City will utilize a web based contract information management system/project management tool in the administration of this Contract. This web based application database is a collaboration tool selected and provided by City, which will allow all project team members continuous access through the Internet to important contract/project data as well as up to the minute decision and approval status information.
2. Design Professional shall provide and shall require its sub-consultants to provide its management personnel assigned to this Contract with access to personal computers and the Internet on a daily basis same.
3. Design Professional shall conduct Project controls, outlined by the City utilizing the web based application database selected and provided by City. **This designated web based application database will be provided by the** Design Professional to its sub-consultants. No additional software will be required. City will assist Design Professional in providing training of sub-Consultant's personnel.
4. Design Professional shall have and shall require its sub-consultants the responsibility for visiting the Project web site on a daily basis, and as necessary to be kept fully appraised of Contract/Project developments, for correspondence, assigned tasks and other matters that transpire on the site and .
    a. These may include but are not limited to: Contracts, Contract Exhibits, Contract Amendments, Drawing Issuances, Addenda, Bulletins, Permits, Insurance & Bonds, Safety Program Procedures, Safety Notices, Accident Reports, Personnel Injury Reports, Schedules, Site Logistics, Progress Reports, Daily Logs, Non-Conformance Notices, Quality Control Notices, Punch Lists, Meeting Minutes, Requests for Information, Submittal Packages, Substitution Requests, Monthly Payment Request Applications, Supplemental Instructions, Owner Variation Directives, Potential Variation Orders, Variation Order Requests, Variation Orders, and the like.
    b. All supporting data including but not limited to shop drawings, product data sheets, manufacturer data sheets and instructions, method statements, safety MSDS sheets, Substitution Requests and required documentation will be submitted in digital format via the web based application database selected and provided by City.

D. **Electronic File Requirements – Closeout**
1. All documents (including as-built drawings) shall be converted or scanned into the Abode Acrobat (.PDF) file format and uploaded to the web based application database selected and provided by City.
2. In addition to the standard closeout submittal requirements detailed elsewhere in the Contract Documents, the Prime Design Professional/Consultant and Sub-Consultants shall also submit all closeout documents including but not limited to all "As-Built Drawings", catalog cuts and Owner's Operation and Maintenance manuals in digital format.

E. Project Management Communications - Construction
1. The Contractor shall use the Internet web based contract information management system/project management communications tool selected and provided by City, and protocols included in that software during the term of this Contract. The use of project management communications as herein described does not replace or change any contractual responsibilities of the participants.

2. The project communications database is on-line and fully functional. User registration, electronic and computer equipment, and Internet connections are the responsibility of each project participant. The sharing of user accounts is prohibited.
3. Training: City's software service provider will provide a group training sessions scheduled by City, the cost of which is included in the initial users fee. Users are required to attend the scheduled training sessions they are assigned. Requests for specific scheduled classes will be on a first come first served basis for available spaces. Companies may also obtain group training from City's software service provider at their own expense
4. Support: City's software service provider will provide on-going support through on-line help files.
5. Project Archive: The archive shall be available to each team member at a nominal cost. The archive set will contain only documents that the firm has security access to during construction. All legal rights in any discovery process are retained. Archive material shall be ordered from City's software service provider.
6. Copyrights and Ownership: Nothing in this specification or the subsequent communications supersedes the parties' obligations and rights for copyright or document ownership as established by the Contract Documents. The use of CAD files, processes or design information distributed in this system is intended only for the project specified herein.
7. Purpose: The intent of using a project management communication tool is to improve project work efforts by promoting timely initial communications and responses. Secondly, to reduce the number of paper documents while providing improved record keeping by creation of electronic document files.
8. Authorized Users: Access to the web site will be by individuals who are licensed users.
   a. Individuals may use the User Application included in these specifications or may request the User Application.
   b. Authorized users will be contacted directly by the web site provider, who will assign the temporary user password.
   c. Individuals shall be responsible for the proper use of their passwords and access to data as agents of the company in which they are employed.
9. Administrative Users: Administrative users have access and control of user licenses and <u>all posted items</u>. **DO NOT POST PRIVATE OR YOUR COMPANY CONFIDENTIAL ITEMS IN THE DATABASE!** Improper or abusive language toward any party or repeated posting of items intended to deceive or disrupt the work of the project will not be tolerated and will result in deletion of the offensive items and revocation of user license at the sole discretion of the Administrative User(s).

Attachment H – Disclosure Statement on Conflict of Interest Associated with the Preparation of Documents Required by the National Environmental Policy Act or Its Implementing Regulations

I, _____, am the _____ of _____,
(Name) (Title) (Name of Organization)
has/has not entered into a contract with the "Kansas City Streetcar Authority (KCSA)", the Kansas City Area Transportation Authority (KCATA)" and/or the City of Kansas City, MO (KCMO) that relate to activities held in conjunction with the preparation of an Environmental Assessment (EA) pursuant to the National Environmental Policy Act (NEPA) for the Kansas City Streetcar-Main Street Extension project. The KCSA/KCMO receives Federal funds. The EA is being prepared by the Federal Transit Administration (FTA) to comply with the National Environmental Policy Act (NEPA) and its implementing regulations (40 CFR Parts 1500-1508 and 23 CFR Part 771).

The NEPA regulations of the Council on Environmental Quality (CEQ) require that contractors involved in the preparation of an EA execute a disclosure statement on the firm's interest, if any, in the outcome of the NEPA process. (40 CFR §1506.5(c))

Accordingly, _____states that it has no financial or other interest in the outcome of the
(company name)
NEPA review of the Project. _____will not acquire nor accept a financial or other
(company name)
interest in the outcome of the NEPA review of the Project until either one of two events has occurred: (1) the EA will result in a Finding of No Sign Significant Impact (FONSI) on the Project in accordance with 40 CFR §1505.2; or (2) the _____'s involvement in preparing NEPA documents for the Project has ended.
(company name)

_____ _____
Signature Date

_____
Name

_____
Title

Company Name
Company Address

PART II

STANDARD TERMS AND CONDITIONS

Sec. 1. General Indemnification.

A. For purposes of this Section 1 only, the following terms shall have the meanings listed:

1. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity obligation.

2. **Design Professional's Agents** means Design Professional's officers, employees, subcontractors, subconsultants, successors, assigns, invitees, and other agents.

3. **City** means City, its Program Manager/Construction Advisor and any of their agents, officials, officers and employees.

B. Design Professional's obligations under this Section with respect to indemnification for acts or omissions, including negligence, of City shall be limited to the coverage and limits of General (not Professional) Liability insurance that Design Professional is required to procure and maintain under this Agreement. Design Professional affirms that it has had the opportunity to recover the costs of the liability insurance required in this Agreement in its contract price.

C. Design Professional shall defend, indemnify and hold harmless City from and against all Claims arising out of or resulting from all acts or omissions in connection with this Agreement caused in whole or in part by Design Professional or Design Professional's Agents, regardless of whether or not caused in part by an act or omission, including negligence, of City. Design Professional is not obligated under this Section to indemnify City for the sole negligence of City.

D. Nothing in this section shall apply to indemnification for professional negligence which is specified in a separate provision of this Agreement.

E. In no event shall the language in this section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 2. Indemnification for Professional Negligence.

Design Professional shall indemnify, and hold harmless City and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including court costs and reasonable attorneys' fees, to the extent caused by any negligent acts, errors, or omissions of the Design Professional, its officers, employees, subconsultants, subcontractors, successors, assigns, invitees and other agents, in the performance of professional services under this Agreement. Design Professional is not obligated under this Section to indemnify City for the negligent acts of City or any of its agencies, officials, officers, or employees.

Sec 3. Insurance.

A. Design Professional shall procure and maintain in effect throughout the duration of this Agreement, and for a period of two (2) years thereafter, insurance coverage not less than the types and amounts specified below. In the event that additional insurance, not specified herein, is required during the term of this Agreement, Design Professional shall supply such insurance at City's cost. Policies containing a Self-Insured Retention are unacceptable to City unless City approves in writing the Design Professional Self-Insured Retention.

1. Commercial General Liability Insurance: with limits of $1,000,000 per occurrence and $2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

a. Severability of Interests Coverage applying to Additional Insureds

b. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be $2,000,000

c. No Contractual Liability Limitation Endorsement

d. Additional Insured Endorsement, ISO form CG20 10, or its equivalent

2. Worker's Compensation Insurance: as required by statute, including Employers Liability with limits of:

Workers Compensation Statutory
Employers Liability

$100,000 accident with limits of:
$500,000 disease-policy limit
$100,000 disease-each employee

3. Commercial Automobile Liability Insurance: with a limit of $1,000,000 written on an "occurrence" basis, covering owned, hired, and non-owned automobiles. If the Design Professional owns vehicles, coverage shall be provided on an "any auto" basis. If the Design Professional does not own any vehicles, coverage shall be provided on a "hired autos" and "nonowned autos" basis. The insurance will be written on a Commercial Business Auto form, or an acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Agreement, by Design Professional.

4. Professional Liability Insurance with limits Per Claim/Annual Aggregate of $1,000,000.

B. The Commercial General Liability Insurance specified above shall provide that City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Agreement. Design Professional shall provide to City at execution of this Agreement a certificate of insurance showing all required endorsements and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

C. The Commercial General Liability and Commercial Automobile Liability insurance specified above shall contain a cross-liability or severability of interest clause or endorsement and shall contain a provision or endorsement that the costs of providing the insureds a defense and appeal, including attorneys' fees, as insureds, shall be supplementary and shall not be included as part of the policy limits but shall remain the insurer's responsibility. Insurance covering the specified additional insureds shall be primary insurance, and all other insurance carried by the additional insureds shall be excess insurance. With respect to Commercial Automobile Liability, Commercial General Liability, and any Umbrella Liability Insurance, Design Professional shall require its insurance carrier(s) to waive all rights of subrogation against City and its agencies, officials, officers, and employees.

D. All insurance coverage must be written by companies that have an A.M. Best's rating of "A-V" or better, and are licensed or approved by the State of Missouri to do business in Missouri.

E. Design Professional's failure to maintain the required insurance coverage will not relieve Contractor of its contractual obligation to indemnify the City pursuant to Sections 1 and 2. If the coverage afforded is cancelled

or changed or its renewal is refused, Design Professional shall give at least 30 days prior written notice to City. In the event of Design Professional's failure to maintain the required insurance in effect, City may order Design Professional to immediately stop work, and upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Agreement as provided for herein and by law.

F. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 4. Design Standards and Endorsement.

A. Except as otherwise directed in writing by City, in the performance of services under this Agreement, Design Professional shall comply with all design standards required by federal, state, local laws or codes including but not limited to all applicable provisions of:

1. Title II of the 2010 ADA Standards for Accessible Design as amended from time to time;
2. the Clean Air Act(42 U.S.C. 7401 *et seq.* and the Clean Water Act (33 U.S.C. 1251 *et seq.*
3. the Missouri Clean Water Law (Chapter 644 RSMo) together with any accompanying regulation(s) contained in the Missouri Code of State Regulations (CSR Title 10), as well as any implementing permits; and
4. Kansas City Code Sec. 3-71. LEED gold standard.

Design Professional shall notify and explain to City any applicable exceptions under these acts.

B. Design Professional shall use all design standards recognized and used in the industry in the performance of services under this agreement. Design Professional shall endorse all plans and specifications, or estimates, and engineering data furnished under this Agreement if prepared by Design Professional. All subcontractors as appropriate shall endorse their respective plans and specifications, or estimates, and engineering data furnished for the Plan or Project.

C. Design Professional shall monitor quality assurance for their design services and shall revise the design and plans at their own expense in case of error or oversight in design by Design Professional or any subcontractor to Design Professional.

Sec. 5. Copyright and Ownership of Documents.

A. Design Professional shall on its behalf and on behalf of its employees and agents, promptly communicate and disclose to City all computer programs, documentation, software and other copyrightable works and all discoveries, improvements and inventions conceived, reduced to practice or made by Design Professionals or its agents, whether solely or jointly with others, during the term of this Agreement resulting from or related to any work Design Professional or its agents may do on behalf of City or at its request. All inventions and copyrightable works that Design Professional is obligated to disclose shall be and remain entirely the property of City. It is agreed that all inventions and copyrightable works are works made for hire and shall be the exclusive property of City. Design Professional hereby assigns to City any rights it may have in such copyrightable works. Design Professional shall cooperate with City in obtaining any copyrights or patents.

B. Original documents, including plans, specifications, reports, maps, models and renderings, including electronic media, prepared or obtained under the terms of this Agreement shall be delivered to and become the property of City and basic survey notes, diaries, sketches, charts, computations and

other data shall be made available upon request by City without restriction or limitation of their use. There shall be no legal limitations upon City in the subsequent use of the documents or ideas developed in the documents. In the event that any of the documents are reused by City, the nameplates or other identification to the Design Professional will be removed and the Design Professional will be released of subsequent liabilities. In the event that any of the design drawings are reused or modified by City, the name plates or other identification to the Design Professional will be removed.

Sec. 6. Governing Law.

This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The City and Design Professional: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum non conveniens as an objection to the location of any litigation.

Sec. 7. Compliance with Laws.

Design Professional shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this Agreement.

Sec. 8. Termination for Convenience.

A. City may, at any time upon ten (10) days notice to Design Professional specifying the effective date of termination, terminate this Agreement, in whole or in part. If this Agreement is terminated by City, City shall be liable only for payment for services rendered before the effective date of termination. Design Professional shall prepare an accounting of the services performed and money spent by Design Professional up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of such date.

B. If this Agreement is terminated prior to Design Professional's completion of services, all work or materials prepared or obtained by Design Professional pursuant to this Agreement shall become City's property.

C. If this Agreement is terminated prior to Design Professional's completion of the services to be performed hereunder, Design Professional shall return to City and sums paid in advance by City for services that would otherwise have had to be rendered between the effective date of termination and the original ending date of the Agreement. Design Professional shall prepare an accounting of the services performed and money spent by Design Professional up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of such date.

Sec. 9. Default and Remedies.

If Design Professional shall be in default or breach of any provision of this Agreement, City may terminate this Agreement, suspend City's performance, withhold payment or invoke any other legal or equitable remedy after giving Design Professional notice and opportunity to correct such default or breach.

Sec. 10. Waiver.

Waiver by City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any term, covenant or condition. No term, covenant, or condition of this Agreement can be waived except by written consent of City, and forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of same to be performed by Design Professional to which the same may apply and, until complete performance by Design Professional of the term, covenant or condition, City shall be entitled to invoke any remedy available to it under this Agreement

or by law despite any such forbearance or indulgence.

Sec. 11. Acceptance.

No payment made under this Agreement shall be proof of satisfactory performance of the Agreement, either wholly or in part, and no payment shall be construed as acceptance of deficient or unsatisfactory work.

Sec. 12. Modification.

Unless stated otherwise in this Agreement, no provision of this Agreement may be waived, modified or amended except in writing signed by City.

Sec. 13. Headings; Construction of Agreement.

The headings of each section of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

Sec. 14. Severability of Provisions.

Except as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provisions(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Sec. 15. Records.

A. For purposes of this section:

1. "City" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Human Relations, the City Manager, the City department administering this Contract and their delegates and agents.

2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.

B. Design Professional shall maintain and retain all Record for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. City shall have a right to examine or audit all Records and Design Professional shall provide access to City of all Records upon ten (10) days written notice from the City.

C. The books, documents and records of Design Professional in connection with this Agreement shall be made available to the City Auditor, the City's Internal Auditor, the City's Director of Human Relations and the City department administering this Agreement within ten (10) days after the written request is made.

Sec. 16. Affirmative Action.

If this Contract exceeds $300,000.00 and Design Professional employs fifty (50) or more people, Design Professional shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to

said provisions, Design Professional warrants that it has an affirmative action program in place and will maintain the affirmation action program in place for the duration of the Contract. Design Professional shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City's Code. Design Professional shall:

1. Submit, in print or electronic format, a copy of Design Professional's current certificate of compliance to the City's Human Relations Department (HRD) prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years. If, and only if, Design Professional does not possess a current certification of compliance, Design Professional shall submit, in print or electronic format, a copy of its affirmative action program to HRD prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years.

2. Require any Subcontractor awarded a subcontract exceeding $300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.

3. Obtain from any Subcontractor awarded a subcontract exceeding $300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Design Professional shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by City's Human Relations Department to enforce this provision. If Design Professional fails, refuses or neglects to comply with the provisions of Chapter 3 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and Design Professional may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

Sec. 17. Tax Compliance.

Design Professional shall provide proof of compliance with the City's tax ordinances administered by the City's commissioner of revenue as a precondition to the City making the first payment under this Agreement or any Agreement renewal when the total Agreement amount exceeds $150,000.00. If Design Professional performs work on an Agreement that is for a term longer than one year, the Design Professional also shall submit to the city proof of compliance with the City's tax ordinances administered by the City's commissioner of revenue as a condition precedent to the city making final payment under the Agreement.

Sec. 18. Assignability and Subcontracting.

(a) Assignability. Design Professional shall not assign or transfer any part or all of Design Professional's obligation or interest in this Contract without prior written approval of City. If Design Professional shall assign or transfer any of its obligations or interests under this Contract without the City's prior written approval, it shall constitute a material breach of this Contract. This provision shall not prohibit Design Professional from

subcontracting as otherwise provided for herein.

(b) Subcontracting. Design Professional shall not subcontract any part or all of Design Professional's obligations or interests in this Contract unless the subcontractor has been identified in a format required by City. If Design Professional shall subcontract any part of Design Professional's obligations or interests under this Contract without having identified the subcontractor, it shall constitute a material breach of this Contract. The utilization of subcontractors shall not relieve Design Professional of any of its responsibilities under the Contract, and Design Professional shall remain responsible to City for the negligent acts, errors, omissions or neglect of any subcontractor and of such subcontractor's officers, agents and employees. City shall have the right to reject, at any point during the term of this Contract, any subcontractor identified by Design Professional, and to require that any subcontractor cease working under this Contract**.** City's right shall be exercisable in its sole and subjective discretion. City shall not be obligated to pay or be liable for payment of any monies which may be due to any subcontractor. Design Professional shall include in any subcontract a requirement that the subcontractor comply with all requirements of this Contract in performing Design Professional's services hereunder.

Sec. 19. Conflicts of Interest.

Design Professional certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Design Professional in this Agreement.

Sec. 20. Conflict of Interest - Certification.

Design Professional certifies that Design Professional is not an expert witness for any party in litigation against the City at the time of the issuance of this Contract.

Sec. 21. Buy American Preference.

It is the policy of the city that any manufactured goods or commodities used or supplied in the performance of any city Agreement or any subcontract hereto shall be manufactured or produced in the United States whenever possible.

Sec. 22. Independent Contractor.

Design Professional is an independent contractor and is not City's agent. Design Professional has no authority to take any action or execute any documents on behalf of City.

Section 23. Employee Eligibility Verification.

If this Contract exceeds five thousand dollars($5,000.00), Design Professional shall execute and submit an affidavit, in a form prescribed by City, affirming that Design Professional does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S. C. § 1324a(h)(3). Design Professional shall attach to the affidavit documentation sufficient to establish Design Professional's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986. Design Professional may obtain additional information about E-Verify and enroll at www.dhs.gov/xprevprot/program/gc_1185221678150.shtm . For those Design Professionals enrolled in E-Verify, the first

and last pages of the E-Verify Memorandum of Understanding that Design Professional will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this Section. Design Professional shall submit affidavit and attachments to City prior to execution of the contract, or at any point during the term of the Contract if requested by City.

EXPERIENCE AND REFERENCE SUMMARY

Project / Contract Number: 89022014

Project Title: Kansas City Streetcar Main Street Southern Extension

Firm's Legal Name	
Mailing Address	
Contact – Name & Email	
Contact – Phone & Fax	

NO.	PROJECT & LOCATION	OWNER NAME & ADDRESS CONTACT & PHONE NUMBER	PROJECT DURATION & DATE COMPLETED	$ VALUE
1.				
2.				
3.				
4				
5				
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7				
9				
10				

ATTACHMENT B

ELECTRONIC DATA REQUIREMENTS

A. Kansas City Plan Room - Electronic Format Requirements and Naming Conventions

1. In addition to other deliverables included in this Contract, items listed below are requirements to accommodate posting bids documents, plans and specifications on the Kansas City Plan Room.
2. Prime Design Professional/Consultant and Sub-Consultants shall adhere to the following electronic format requirements and use the naming conventions as set out below:
   a. **Drawings/plans**
      (1) Drawings/plans should be rendered as 200-300 dpi **PDF Format** images. No files may be larger than 5 megabytes in size. Plans/Drawings numbering should follow Form 00015 List of Drawings.
      (2) File names may not include any symbols such as **< > : . " / \ | ? ' & # % ^ * ( ) [ ] { } +**
      (3) FILE NAMES: Plans/Drawings numbering should follow Form 00015 List of Drawings. All plans should be named in the following manner: three digit sequential number-brief descriptor. For example: 001-Cover.**pdf** or 002-arc1.**pdf**
   b. **CSI specification sections (project manuals)**
      (1) CSI specification sections should be named by division, using DIV as a prefix. For example:
         (a) DIV01.PDF (Technical, Project Specific)
         (b) DIV02.PDF
         (c) DIV03.PDF
   c. Summary:
      (1) Division 00 and 01 in Microsoft Word or Excel
      (2) Division 2-16 in PDF Format
      (3) Completed document originals of Plans and Diagrams of project must be submitted as 200-300 dpi **PDF Format** images.

Note: *The following remaining sections should be included for projects being processed in e-Builder. Delete these sections in their entirety if they are not applicable. Be certain to remove this note before your final Contract Document is printed.*

B. General Requirements

1. Professional Services Consultant/Contractor and its Sub-Consultant/Contractor(s) shall provide at a minimum, the following to its staff:
   a. **Computer**: Minimum Intel Pentium® 4 Processor 2.4 GHz or equivalent processor with 512MB of RAM; recommended Centrino Duo® Processors 1.6 GHz or equivalent with 2GB of RAM, or higher.
   b. **Computer Operation System**: Windows XP, Windows Vista, or Windows 7
   c. **Web Browser**: Microsoft Internet Explorer 9
   d. **Work and Spreadsheet Processors**: Microsoft Office Word, Excel and Outlook
   e. **Scheduling Software**: Microsoft Project or Primavera
   f. **Internet Service Provider**: A reliable ISP in the area of the Project
   g. Connection Speed/Minimum Bandwidth: DSL, ADSL or T1 Line for transferring a minimum of **3 Mbps** Downstream **and 512 Kbps** Upstream

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4. Design Professional shall have and shall require its sub-consultants the responsibility for visiting the Project web site on a daily basis, and as necessary to be kept fully appraised of Contract/Project developments, for correspondence, assigned tasks and other matters that transpire on the site and .
    a. These may include but are not limited to: Contracts, Contract Exhibits, Contract Amendments, Drawing Issuances, Addenda, Bulletins, Permits, Insurance & Bonds, Safety Program Procedures, Safety Notices, Accident Reports, Personnel Injury Reports, Schedules, Site Logistics, Progress Reports, Daily Logs, Non-Conformance Notices, Quality Control Notices, Punch Lists, Meeting Minutes, Requests for Information, Submittal Packages, Substitution Requests, Monthly Payment Request Applications, Supplemental Instructions, Owner Variation Directives, Potential Variation Orders, Variation Order Requests, Variation Orders, and the like.
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2. In addition to the standard closeout submittal requirements detailed elsewhere in the Contract Documents, the Prime Design Professional/Consultant and Sub-Consultants shall also submit all closeout documents including but not limited to all "As-Built Drawings", catalog cuts and Owner's Operation and Maintenance manuals in digital format.

E. Project Management Communications - Construction
1. The Contractor shall use the Internet web based contract information management system/project management communications tool selected and provided by City, and protocols included in that software during the term of this Contract. The use of project management communications as herein described does not replace or change any contractual responsibilities of the participants.
2. The project communications database is on-line and fully functional. User registration, electronic and computer equipment, and Internet connections are the responsibility of each project participant. The sharing of user accounts is prohibited.

3. Training: City's software service provider will provide a group training sessions scheduled by City, the cost of which is included in the initial users fee. Users are required to attend the scheduled training sessions they are assigned. Requests for specific scheduled classes will be on a first come first served basis for available spaces. Companies may also obtain group training from City's software service provider at their own expense
4. Support: City's software service provider will provide on-going support through on-line help files.
5. Project Archive: The archive shall be available to each team member at a nominal cost. The archive set will contain only documents that the firm has security access to during construction. All legal rights in any discovery process are retained. Archive material shall be ordered from City's software service provider.
6. Copyrights and Ownership: Nothing in this specification or the subsequent communications supersedes the parties' obligations and rights for copyright or document ownership as established by the Contract Documents. The use of CAD files, processes or design information distributed in this system is intended only for the project specified herein.
7. Purpose: The intent of using a project management communication tool is to improve project work efforts by promoting timely initial communications and responses. Secondly, to reduce the number of paper documents while providing improved record keeping by creation of electronic document files.
8. Authorized Users: Access to the web site will be by individuals who are licensed users.
    a. Individuals may use the User Application included in these specifications or may request the User Application.
    b. Authorized users will be contacted directly by the web site provider, who will assign the temporary user password.
    c. Individuals shall be responsible for the proper use of their passwords and access to data as agents of the company in which they are employed.
9. Administrative Users: Administrative users have access and control of user licenses and <u>all posted items</u>. **DO NOT POST PRIVATE OR YOUR COMPANY CONFIDENTIAL ITEMS IN THE DATABASE!** Improper or abusive language toward any party or repeated posting of items intended to deceive or disrupt the work of the project will not be tolerated and will result in deletion of the offensive items and revocation of user license at the sole discretion of the Administrative User(s).

GENERAL CONDITIONS

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ARTICLE 1 DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1. Addenda - Written or graphic instruments issued prior to the opening of Bids that clarify, correct or change the Bidding Requirements or the Contract Documents.

2. Agreement—The written Contract between CITY and CONTRACTOR governing the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

3. Application for Payment—The form accepted by CITY's Representative which is to be used by CONTRACTOR in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. Asbestos - Any material that contains more than one percent (1%) Asbestos and is friable or is releasing Asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. Bid- The offer or proposal of the Bidder submitted on the Bid Form/Contract setting forth the prices for the Work to be performed. A Bidder's Bid becomes a Contract with CITY if the CITY executes the Bid Form/Contract submitted by Bidder. If the CITY executes the Bid Form/Contract submitted by Bidder, the term "Bidder" shall mean CONTRACTOR.

6. Bidder- One who submits a Bid directly to CITY, as distinct from a sub-bidder who submits a bid to a Bidder. If the CITY executes the Bid Form/Contract submitted by Bidder, the term "Bidder" shall mean CONTRACTOR in both the Bidding Documents and Contract Documents unless the context clearly indicates otherwise.

7. Bidding Documents- The advertisement or Invitation to Bid, Instructions to Bidders, the Bid Form/Contract, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

8. Bidding Requirements- The advertisement or invitation to bid, Instructions to Bidders, Bid security, and the Bid Form/Contract with any supplements.

9. Bonds- Payment Bond and Performance and Maintenance Bond and other instruments of security.

10. Calendar Day- Any day shown on the calendar, including Saturdays, Sundays, and holidays.

11. Change Order- A written document issued by CITY that authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract.

12. CITY/OWNER- Kansas City, Missouri, a constitutionally chartered municipal corporation, with which CONTRACTOR has entered into the Contract and for whom the Work is to be provided**.**

13. CITY's Representative- Person or agency designated to act for the Director as provided in these Contract Documents.

14. Consultant- Person, firm or corporation having a contract with CITY or DESIGN PROFESSIONAL to furnish services as an independent professional associate or Consultant with respect to the Project and who's identified as such in the Supplementary Conditions.

The Consultant(s) is identified and their seals affixed on the Certification Page(s). The certifications describe the respective responsibilities for the Drawings and Specifications prepared by the Consultant(s) and are incorporated into this Contract.

15. Contract- The entire and integrated written agreement between CITY and CONTRACTOR concerning the Work that incorporates all Contract Documents. The Bid Form/Contract submitted by Bidder is the Contract between CITY and CONTRACTOR upon execution by CITY. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

16. Contract Documents- The Contract Documents establish the rights and obligations of the parties and include the Contract, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid Form/Contract (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Intent to Contract), the HRD Construction Project Instructions, the Contractor's Utilization Plan/Request for Waiver, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Project Manual and the certification page(s) of the DESIGN PROFESSIONAL and Consultant(s), together with approved project baseline schedule and amendments thereto and all Written Amendments, Change Orders, Work Change Directives, and DESIGN PROFESSIONAL's written interpretations and clarifications issued on or after the Effective Date of the Contract, and approved Shop Drawings. Reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this Paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by CITY to CONTRACTOR are not Contract Documents, except project schedules submitted by CONTRACTOR and approved by CITY.

17. Contract Price- The money payable by CITY to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement.

18. Contract Times- The number of days or the dates stated in the Supplementary Conditions: (a) to achieve Substantial Completion, and (b) to complete the Work so that it is ready for final payment as evidenced by CITY's Representative's written recommendation of final payment.

19. CONTRACTOR- The person, firm, partnership, company, corporation or association licensed or otherwise authorized by law to do business in Missouri, with whom CITY has entered into the Agreement.

20. Day– Shall constitute a Calendar Day.

21. DESIGN PROFESSIONAL- Architect, Engineer or other licensed professional who is either employed by or has contracted with CITY to serve in a design capacity and whose Consultants, members, partners, employees or agents have prepared and sealed the Drawings and Specifications.

The DESIGN PROFESSIONAL(s) is identified and their seals affixed on the Certification Page(s). The certifications describe the respective responsibilities for the Drawings and Specifications prepared by the DESIGN PROFESSIONAL and are incorporated into this Contract.

22. DESIGN PROFESSIONAL's Project Representative- The authorized representative of DESIGN PROFESSIONAL who may be assigned to the Site or any part thereof.

23. Director- The term Director shall mean the duly appointed executive officer of a department of City who is empowered by the City Charter or by the City Council to enter into a contract on behalf of City, or to grant a permit for improvements to land owned by City. A Director is authorized to delegate this authority to a City employee so designated in writing.

24. Drawings- The drawings which graphically show the scope, extent and character of the Work to be furnished and performed by CONTRACTOR and which have been prepared by DESIGN PROFESSIONAL and are included in the Contract Documents. Shop Drawings are not Drawings as so defined.

25. Effective Date of the Contract- The date indicated in the Contract on which it becomes effective, but if no such date is indicated it means the date on which the Contract is fully executed by CITY.

26. General Requirements- Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

27. Hazardous Environmental Condition- The presence at the Site of Asbestos, Lead-Based Paint, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

28. Hazardous Waste- The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

29. Laws or Regulations- Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

30. Lead-Based Paint- Any paint, varnish, stain, or other applied coating that has one (1) mg or more of lead per square centimeter. The terms “leaded paint” and “lead-containing paint” are synonymous with Lead-Based Paint.

31. Liens- Liens, charges, security interests or encumbrances upon real property or personal property.

32. Milestone- A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

33. Notice of Intent to Contract- The written notice by CITY to the apparent successful Bidder stating that upon compliance by that apparent successful Bidder with the conditions in the Bid Documents enumerated, within the time specified, and upon enactment of an appropriate ordinance or resolution, CITY will sign and deliver the Contract.

34. Notice to Proceed- A written notice given by CITY to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR’s obligations under the Contract Documents.

35. Partial Utilization- Use by CITY of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

36. PCBs- Polychlorinated biphenyls.

37. Petroleum- Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.

38. Project- The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

39. Project Manual- The documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual may be issued in one or more volumes and is contained in the table(s) of contents.

40. Radioactive Material- Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

41. Samples- Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

42. Shop Drawings- All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

43. Site- Lands or areas indicated in the Contract Documents as being furnished by CITY upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by CITY which are designated for the use of CONTRACTOR.

44. Specifications- Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

45. Subcontractor- Any individual, firm, partnership, company, corporation or association licensed or otherwise authorized by law to do business in Missouri, to whom CONTRACTOR, with written notification to CITY, has entered into an agreement to perform a part of the Work.

46. Substantial Completion- When Work (or a specified part thereof) has progressed to the point where, in the opinion of DESIGN PROFESSIONAL as evidenced by DESIGN PROFESSIONAL's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

47. Supplementary Conditions- The part of the Contract Documents which amends and/or supplements these General Conditions.

48. Supplier- A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated into the Work by CONTRACTOR or any Subcontractor.

49. Underground Facilities- All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

50. Unit Price Work- Work to be paid for on the basis of unit prices.

51. Work- The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor, and furnishing and incorporating material and equipment into the construction, and furnishing documents, all as required by the Contract Documents.

52. Work Change Directive- A written directive to CONTRACTOR, issued on or after the Effective Date of the Contract, signed by CITY and recommended by DESIGN PROFESSIONAL, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed, or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or

documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

53. Work Day - Any day during which the CONTRACTOR is able to work a period of six (6) hours or more. Days that are not Work Days are days during which the CONTRACTOR is unable to work for a period of six (6) hours by reason of strikes, boycotts, labor disputes, embargoes, unusual delays in transportation or shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which CONTRACTOR is not responsible or which is not within its control. Saturdays, Sundays, and holidays on which the CONTRACTOR's forces engage in Work requiring the presence of an inspector, will be considered as Work Days.

54. Written Amendment- A written statement modifying the Contract Documents, signed by CITY and CONTRACTOR on or after the Effective Date of the Contract and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of DESIGN PROFESSIONAL as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to DESIGN PROFESSIONAL any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.08 or any other provision of the Contract Documents.

B. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to CITY 's Representative's recommendation of final payment (unless responsibility for the protection thereof has been assumed by CITY at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

C. Furnish, Install, Perform, Provide

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CONTRACTOR, “provide” is implied.

D. Unless stated otherwise in the Contract Documents, words and phrases which have a well-known technical or construction industry or trade meanings are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 PRELIMINARY MATTERS

2.01 Delivery of Bonds

A. CONTRACTOR shall deliver to CITY such Bonds as CONTRACTOR may be required to furnish.

2.02 Evidence of Insurance

A. CONTRACTOR shall deliver to CITY certificates of insurance or other evidence of insurance that CITY may request, which CONTRACTOR is required to purchase and maintain in accordance with Article 5 or any other applicable provision in the Contract Documents.

2.03 Copies of Documents

A. CITY shall furnish to CONTRACTOR one (1) copy of the Drawings and Specifications, including addenda.

2.04 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the date indicated in the Notice to Proceed.

2.05 Starting the Work

A. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run, but no Work shall be done at the Site prior to the date on which the Contract Times commence to run, unless otherwise indicated in the Notice to Proceed.

2.06 Before Starting Construction

A. CONTRACTOR's Review of Contract Documents: Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to DESIGN PROFESSIONAL any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from DESIGN PROFESSIONAL before proceeding with any Work affected thereby. CONTRACTOR shall not be liable to CITY or DESIGN PROFESSIONAL for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof.

B. Preliminary Schedules: Within ten (10) days after the Effective Date of the Contract, or on such later date as CITY's Representative shall provide in writing, CONTRACTOR shall submit to CITY's Representative for review:

1. Preliminary Project Schedule: CONTRACTOR shall submit a proposed project schedule for CITY’s acceptance. The proposed project schedule shall include a detailed and comprehensive construction schedule utilizing a critical path method diagram network that (a) shows all major procurement and construction elements and phases of the Project; (b) breaks down each element or phase by trade; (c) shows early and late starts so that all float time will be accurately identified; (d) all other activities necessary for the timely completion of the Project in accordance with the scheduled dates for Substantial and Final Completion; and (e) highlights the project’s critical path. CITY’s acceptance is expressly limited to CITY’s acknowledgement that, based upon CITY’s limited review, the dates of Substantial

Completion and Milestone dates are acceptable. After final acceptance of the preliminary project schedule by the CITY, it shall be considered the project baseline schedule pursuant to Paragraph 2.07(B).

2. Preliminary schedule of Shop Drawings and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittal; and

3. Preliminary 01290.02 Schedule of Values for all of the Work which will include quantities and prices of items which when added together equals the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. Preconstruction Conference: Before any Work at the Site may be started, a conference attended by CONTRACTOR, DESIGN PROFESSIONAL and others, as appropriate, will be scheduled by CITY's Representative to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.06 B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records, Claims process, dispute resolution or any other applicable provisions of the Contract Documents.

2.07 Acceptable Schedules

A. Acceptable schedule: The Contractor shall update and submit to the CITY for review the preliminary schedule within seven (7) Calendar Days after the Notice to Proceed.

1. The CITY shall review and make any necessary comments and/or adjustments to the updated preliminary schedule. The Contractor shall incorporate the CITY's comments and resubmit the updated preliminary schedule within seven (7) Calendar Days from receipt of the CITY's comments.

B. Project Baseline Schedule: The accepted updated preliminary schedule shall be considered the project baseline schedule and shall be used by the CONTRACTOR for planning, scheduling, managing, and executing the Work. The project baseline schedule shall not be changed without the written consent of CITY. The project baseline schedule may be further modified by the Supplemental Conditions.

C. CONTRACTOR's schedule of values will be acceptable to CITY's Representative as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 CONTRACT DOCUMENTS : INTENT, AMENDING, REUSE

3.01 Intent

A. The Contract Documents comprise the entire Contract between CITY and CONTRACTOR concerning the Work.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for at no additional cost to CITY. Clarifications and interpretations of the Contract Documents shall be issued by DESIGN PROFESSIONAL as provided in Paragraph 9.03.

C. Correlation and intent of documents: The Drawings and Specifications are intended to supplement each other. Any Work shown on the Drawings and not mentioned in the Specifications (or vice versa) shall be as binding and shall be completed the same as if mentioned or shown on both. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. Change Orders and Written Amendments
2. Project Baseline Schedule Requirements
3. Approved Shop Drawings
4 Addenda, with those of later date having precedence over those of earlier date
5. The Supplementary Conditions
6. The General Conditions
7. Drawings and Specifications

D. In the case of an inconsistency between Drawings and Specifications, the requirements of the Specifications shall govern. If Drawings are in conflict, larger scale details shall govern over smaller or no-scale Drawings. If Specification sections are in conflict with each other, the conflict shall be resolved by DESIGN PROFESSIONAL in accordance with reasonable interpretation of such documents.

E. The general character of the detailed Work is shown on the Drawings, but minor modifications may be made in the full size or scale details. Where the word "similar" occurs on the Drawings, it shall be used in its general sense and not as meaning identical, and all details shall be worked out in relation to their location and their connection to the other parts of the Work. Where on any Drawings a portion of the Work is drawn out and the remainder is indicated in outline, the parts drawn out shall apply also to all other like portions of the Work. Where ornaments or other details are indicated by starting only, such details shall be continued throughout the courses or parts in which they occur and shall also apply to all other similar parts in the Work, unless otherwise indicated.

3.02 Reference to Standards and Specifications of Technical Societies

A. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or on the date of CONTRACTOR's proposal if there are no Bids), except as may be otherwise specifically stated in the Contract Documents.

1. No provision of any such standard, specification, manual, code or instruction of Supplier shall be effective to change the duties or responsibilities of CITY, CONTRACTOR or DESIGN PROFESSIONAL, or any of their Subcontractors, Consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to CITY or DESIGN PROFESSIONAL or any of their Consultants, agents or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies: If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Laws or Regulations applicable to the performance of the Work or of any standard, specification, manual, code or any instruction of any Supplier referred to in Paragraph 6.07, CONTRACTOR shall report it immediately to DESIGN PROFESSIONAL in writing. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as authorized by Paragraph 6.17) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to CITY or DESIGN PROFESSIONAL for failure to report any such conflict, error, ambiguity or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

B. Resolving Discrepancies. The provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and:

1. the provisions of any standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

2. the provisions of any Laws or Regulations applicable to the performance of the Work.

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

1. a Written Amendment or

2. a Change Order (pursuant to Article 10), whether pursuant to a Work Change Directive or otherwise.

B. The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, in one or more of the following ways

1. DESIGN PROFESSIONAL's approval of a Shop Drawing or Sample (pursuant to Paragraph 6.18), or

2. DESIGN PROFESSIONAL's written interpretation or clarification (pursuant to Paragraph 9.03).

3.05 Reuse of Documents

A. CONTRACTOR and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under this Contract:

1. shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of DESIGN PROFESSIONAL or Consultant, and

2. shall not reuse any of such Drawings, Specifications, other documents or copies thereof on extensions of the Project or any other project without written consent of CITY, and of DESIGN PROFESSIONAL or Consultant, as applicable, and specific written verification or adaptation by DESIGN PROFESSIONAL or Consultant.

This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

A. CITY shall furnish the Site. CITY shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which CONTRACTOR will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by CITY, unless otherwise provided in the Contract Documents. If CONTRACTOR and CITY are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times or both as a result of any delay in CITY's furnishing these lands, rights-of-way or easements, CONTRACTOR may make a Claim as provided in Article 16. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

A. Reports and Drawings: Reference is made to the Supplementary Conditions for identification of:

1. Subsurface Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that have been utilized by DESIGN PROFESSIONAL in preparing the Contract Documents; and

2. Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that have been utilized by DESIGN PROFESSIONAL in preparing the Contract Documents.

B. Limited Reliance by CONTRACTOR on Technical Data Authorized: CONTRACTOR may rely upon the general accuracy of the technical data contained in reports and drawings of subsurface or physical conditions, but such reports and drawings are not Contract Documents. The technical data is identified in the Supplementary Conditions. Except for reliance on such technical data, CONTRACTOR may not rely upon or make any Claim against CITY, DESIGN PROFESSIONAL or any Consultant with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or

3. any CONTRACTOR interpretation of or conclusion drawn from any technical data or any such other data, interpretations, opinions or information.

4.03 Differing Subsurface or Physical Conditions

A. Notice of Differing Subsurface or Physical Conditions. If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any technical data on which CONTRACTOR is entitled to rely as provided in Paragraphs 4.02 A and 4.02 B is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.17), notify CITY and DESIGN PROFESSIONAL in writing about such condition(s). CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. DESIGN PROFESSIONAL's Review: After receipt of notice as required by Paragraph 4.03 A, DESIGN PROFESSIONAL will promptly review the pertinent conditions, determine the necessity for CITY to obtain additional exploration or tests with respect thereto and notify CITY in writing (with a copy to CONTRACTOR) of DESIGN PROFESSIONAL's findings and conclusions.

C. Possible Contract Documents Change: If CITY concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of the categories in Paragraph 4.03 A, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.

D. Possible Price or Times Adjustments: An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of a subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

1. the condition must meet any one or more of the categories described in Paragraphs 4.03 A.1 through 4.03 A.4, inclusive;

2. a change in the Contract Documents pursuant to Paragraph 4.03 C will not be an automatic authorization of, nor a condition precedent to, entitlement to any such adjustments;

3. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.06 and 11.04; and

4. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if;

a. CONTRACTOR knew, or by the exercise of ordinary care could have known, of such conditions at the time CONTRACTOR made a final commitment to CITY with respect to Contract Price and Contract Times by the submission of a Bid; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

c. CONTRACTOR failed to give the written notice as required by Paragraph 4.03 A.

E. If CITY and CONTRACTOR are unable to agree on entitlement to, or magnitude of, an equitable adjustment in the Contract Price pursuant to Article 11 and/or Contract Times pursuant to Article 12, a Claim may be made therefore as provided in Article 16. However, CITY, DESIGN PROFESSIONAL and Consultants shall not be liable to CONTRACTOR for any costs, losses or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.04. Physical Conditions – Underground Facilities

A. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to CITY or DESIGN PROFESSIONAL by the owners of such Underground Facilities or by others.

1**.** CITY and DESIGN PROFESSIONAL shall not be responsible for the accuracy or completeness of any such information or data; and

2. The cost of all of the following will be included in the Contract Price and CONTRACTOR shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities during construction, and

d. the safety and protection of all such Underground Facilities as provided in Paragraph 6.14 and repairing any damage thereto resulting from the Work.

B. Not Shown or Indicated: If an Underground Facility is uncovered or revealed at or contiguous to the Site, and was not shown or indicated in the Contract Documents, or was

shown or indicated incorrectly in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.17), identify the owner of such Underground Facility and give written notice to that owner and to CITY and DESIGN PROFESSIONAL.

C. DESIGN PROFESSIONAL's Review: After receipt of notice as required by Paragraph 4.04 B, DESIGN PROFESSIONAL will promptly review the consequences of the existence of the Underground Facility and notify CITY in writing (with a copy to CONTRACTOR) of DESIGN PROFESSIONAL's findings and conclusions.

D. Possible Contract Documents Change: If CITY concludes that a change in the Contract Documents is required as a result of the existence of an Underground Facility that either was not shown, or was shown incorrectly, in the Contract Documents, a Work Change Directive or Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.

E. Possible Price or Times Adjustments: An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of the Underground Facility causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

1. a change in the Contract documents pursuant to Paragraph 4.04 D will not be an automatic authorization of, nor a condition precedent to, entitlement to any such adjustments;

2. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.06 and 11.04; and

3. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if;

a. CONTRACTOR knew, or by the exercise of ordinary care could have known, of the existence of the Underground Facility at the time CONTRACTOR made a final commitment to CITY with respect to Contract Price and Contract Times by the submission of a Bid; or

b. the existence of the Underground Facility could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

c. CONTRACTOR failed to give the written notice as required by Paragraph 4.04 B.

F. If CITY and CONTRACTOR are unable to agree on entitlement to, or magnitude of, an equitable adjustment in the Contract Price pursuant to Article 11 and/or Contract Times pursuant Article 12, a Claim may be made therefore as provided in Article 16. However, CITY, DESIGN PROFESSIONAL and Consultants shall not be liable to CONTRACTOR for any costs, losses or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.05 Reference Points

A. CITY shall provide engineering surveys to establish reference points for construction that in DESIGN PROFESSIONAL's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of CITY. CONTRACTOR shall report to DESIGN PROFESSIONAL whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be

responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Asbestos, Lead-Based Paint, PCBs, Petroleum, Hazardous Waste or Radioactive Material

A. Reports and Drawings: Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the DESIGN PROFESSIONAL in the preparation of the Contract Documents.

B. Limited Reliance by CONTRACTOR on Technical Data Authorized: CONTRACTOR may rely upon the general accuracy of the technical data contained in reports and drawings relating to a Hazardous Environmental Condition at the Site, but such reports and drawings are not Contract Documents. Such technical data is identified in the Supplementary Conditions. Except for such reliance on such technical data, CONTRACTOR may not rely upon or make any Claim against CITY, DESIGN PROFESSIONAL or any Consultant with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or

2**.** other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any CONTRACTOR interpretation of or conclusion drawn from any technical data or any such other data, interpretations, opinions or information.

C. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CONTRACTOR shall be responsible for all Hazardous Environmental Conditions created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible. CONTRACTOR shall not be entitled to an extension of the Contract Times or an increase in the Contract Price if CONTRACTOR, Subcontractor, Supplier or anyone for whom CONTRACTOR is responsible created any Hazardous Environmental Condition at the Site or in connection with the Work.

D. If CONTRACTOR encounters a Hazardous Environmental Condition at the Site or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition at the Site, CONTRACTOR shall immediately:

1. secure or otherwise isolate such condition;

2. stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6. 15); and

3. notify CITY and DESIGN PROFESSIONAL (and promptly thereafter confirm such notice in writing). CITY shall promptly consult with DESIGN PROFESSIONAL concerning the necessity for CITY to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall neither resume Work nor be required to resume Work in connection with such condition or in any affected area until after CITY has obtained any required permits related thereto and delivered to CONTRACTOR written notice:

1. specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or

2. specifying any special conditions under which such Work may be resumed safely. If CITY and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price pursuant to Article 11and/or Contract Times to

pursuant to Article 12 as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, a Claim may be made therefore as provided in Article 16.

F. If after receipt of written notice as required in Paragraph 4.06 E, CONTRACTOR does not agree to resume Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under special conditions specified in the notice, then CITY may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If CITY and CONTRACTOR cannot agree as to entitlement to or magnitude of an equitable adjustment in Contract Price pursuant to Article 11and/or Contract Times pursuant to Article 12 as a result of deleting such portion of the Work, then a Claim may be made therefore as provided in Article 16. CITY may have such deleted portion of the Work performed by CITY's own forces or others in accordance with Article 7.

G. The provisions of Paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

H. All materials used, whether new or salvaged, shall be asbestos-free materials. CONTRACTOR shall immediately call to the attention of the CITY's Representative any specified material or product which the CONTRACTOR knows or suspects to contain asbestos, whether new or salvaged.

ARTICLE 5 BONDS AND INSURANCE

5.01 Performance, Payment and Other Bonds

A. CONTRACTOR shall furnish Performance and Maintenance and Payment Bonds, each in an amount at least equal to the Contract Price, as set out in the Contract Documents, as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one (1) year after the date when final payment of the Contract becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations. A certified copy of the agent's authority to act must accompany all Bonds signed by an agent.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirement of Paragraph 5.01 B, CONTRACTOR shall within twenty (20) days thereafter substitute another Bond and surety, both of which must be acceptable to CITY.

5.02 Licensed Sureties and Insurers

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by CITY or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed in the State of Missouri and in the jurisdiction in which the Project is located, if not in Missouri, to issue Bonds or insurance policies for the limits and coverages so required. All surety and insurance companies shall hold an A.M. Best rating of A-, V, or better.

5.03 Certificates of Insurance

A. CONTRACTOR shall deliver to CITY and DESIGN PROFESSIONAL, prior to the start of any Work at the Project Site, properly completed certificates of insurance or other evidence that the required insurance is in full force and effect, in a form acceptable to CITY. The receipt or acceptance of a certificate of insurance that does not incorporate the required terms and coverage shall not constitute a waiver by the City of the insurance requirements contained in the Contract Documents.

B. All policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by CONTRACTOR in accordance with Paragraphs 5.04 and 5.06 will contain waiver provisions in accordance with Paragraph 5.07 A. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

C. If the coverage afforded is cancelled or changed or its renewal is refused, CONTRACTOR shall give at least thirty (30) days prior written notice to CITY and to each other additional insured to whom a certificate of insurance has been issued.

5.04 CONTRACTOR's Liability Insurance

A. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnished, and will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance and furnishing of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed or furnished by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

4. claims for damages insured by customary personal injury liability coverage;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefore; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by Paragraph 5.04 A, to be purchased and maintained shall:

1. with respect to insurance required by Paragraphs 5.04 A.3 through 5.04 A.5 inclusive, include as additional insureds (subject to any customary exclusion for professional liability) CITY, DESIGN PROFESSIONAL, Consultants and any other individuals or entities identified in the Supplementary Conditions to be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in Paragraph 5.04 C or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering CONTRACTOR's indemnity obligations;

5. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work in accordance with Paragraphs 13.06 and 13.07;

6. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two (2) years after final payment (and CONTRACTOR shall furnish CITY and each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued evidence satisfactory to CITY and any such additional insured of continuation of such insurance);

7. contain a cross-liability or severability of interest clause or endorsement. Insurance covering the specified additional insureds shall be primary insurance, and all other insurance carried by the additional insureds shall be excess insurance;

8. with respect to commercial automobile liability, commercial general liability, and umbrella liability insurance, CONTRACTOR shall require its insurance carrier(s) to waive all rights of subrogation against CITY, and CITY's officers, directors, partners, employees and agents; and

9. contain a provision or endorsement that the costs of providing the insureds a defense and appeal, including attorneys' fees, as insureds, shall be supplementary and shall not be included as part of the policy limits but shall remain the insurer's responsibility.

C. Specific policies of insurance required by this Paragraph 5.04 shall include:

1. Workers' Compensation and Employers' Liability Insurance. This insurance shall protect CONTRACTOR against all claims under applicable state workers"' compensation laws, including coverage as necessary for the benefits provided under the United States Longshoremen's and Harbor Workers' Act and the Jones Act. CONTRACTOR shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of workers' compensation laws. This policy shall include an "all states" or "other states" endorsement. The liability limits shall be not less than:

Workers' Compensation: Statutory

Employers' liability: $1,000,000 each occurrence

2. Commercial Automobile Liability Insurance. This insurance shall be occurrence type written in comprehensive form and shall protect CONTRACTOR, and CITY, DESIGN PROFESSIONAL and Consultants against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, either on or off the Project Site, whether they are owned, non-owned, or hired.

   The liability limits shall be not less than: $2,000,000

3. Commercial General Liability Insurance. This insurance shall be occurrence type written in comprehensive form acceptable to CITY. This insurance shall protect CONTRACTOR, and CITY, DESIGN PROFESSIONAL and Consultants as additional insureds, against claims arising from injuries, sickness, disease, or death of any person or damage to property arising out of performance of the Work. The policy shall also include coverage for personal injury liability; contractual liability; completed operations and products liability; and for blasting, explosion, and collapse of buildings; and damage to underground property. The liability limits for bodily injury and property damage shall be not less than:

$2,000,000 combined single limit for each occurrence

$2,000,000 general aggregate.

4. The insurer's costs of providing the insureds a defense and appeal as additional insureds, including attorney's fees, shall be supplementary and shall not be included as part of the policy limits but shall remain the insurer's separate responsibility.

5.05 CITY's Liability Insurance

A. In addition to the insurance required to be provided by CONTRACTOR under Paragraph 5.04, CITY, at CITY's option, may purchase and maintain at CITY's expense liability insurance

that will protect CITY against claims which may arise from operations under the Contract Documents.

5.06 Property Insurance

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall purchase and maintain property insurance on the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws or Regulations). This insurance shall:

1. include the interests of CITY, CONTRACTOR, Subcontractors, and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, tornado, collapse, debris removal, demolition occasioned by enforcement of Laws or Regulations, water damage, damage caused by frost and freezing, and acts of God;

3. be maintained in effect until final payment is made unless otherwise agreed to in writing by CITY with thirty (30) days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. CITY shall not be responsible for purchasing and maintaining any property insurance to protect the interests of CONTRACTOR, Subcontractors or others involved in the Work to the extent of any deductible amounts. The risk of loss within the deductible amounts will be borne by CONTRACTOR, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

5.07 Waiver of Rights

A. CITY and CONTRACTOR intend that all policies purchased in accordance with Paragraphs 5.04 and 5.06 will protect CITY, CONTRACTOR, DESIGN PROFESSIONAL Consultants, Subcontractors, and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. CITY and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work, but only to the extent of insurance coverage; and, in addition, waive all such rights against DESIGN PROFESSIONAL, Consultants, Subcontractors, and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of any and each of them) under such policies for losses and damages so caused and covered by insurance. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by CITY as trustee or otherwise payable under any policy so issued. None of the above waivers shall apply if specifically in conflict with Laws and Regulations.

5.08 Receipt and Application of Insurance Proceeds

A. Any insured loss under the property insurance will be adjusted with CITY and made payable to CITY as fiduciary for the insureds, as their interests may appear, subject to the requirements of any indentures of indebtedness entered into by CITY.

B. CITY as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object to CITY's exercise of this power in writing within fifteen (15) days after the occurrence of loss. If such objection is made, CITY as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, CITY as fiduciary shall adjust and settle the loss with the insurers.

5.09 Partial Utilization – Property Insurance

A. If CITY finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with Paragraph 14.05; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 CONTRACTOR'S RESPONSIBILITIES

6.01 Indemnification

A. For purposes of this Paragraph 6.01 only, the following terms shall have the meanings listed:

1. Claims means all claims, damages, liability, losses, costs and expenses, including court costs and reasonable attorneys''' fees, including attorney's fees incurred by the City in the enforcement of this indemnity obligation.

2. CONTRACTOR'S Agents means CONTRACTOR's officers, employees, sub-consultants, subcontractors, successors, assigns, invitees, and other agents.

3. CITY means CITY, its Program Manager/Construction Advisor and any of their agents, officials, officers, employees and program managers or construction advisors.

B. CONTRACTOR's obligations under this Paragraph with respect to indemnification for acts or omissions, including negligence, of CITY, shall be limited to the coverage and limits of insurance that CONTRACTOR is required to procure and maintain under this Contract. CONTRACTOR affirms that it has had the opportunity to recover the costs of the liability insurance required in this Contract in its contract price.

C. CONTRACTOR shall defend, indemnify and hold harmless CITY from and against all Claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by CONTRACTOR or CONTRACTOR's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of OWNER.

D. In any and all Claims against CITY, DESIGN PROFESSIONAL, CONSULTANT, or any of their respective agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.01 C shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

E. The indemnification obligations of CONTRACTOR under Paragraph 6.01 C shall not extend to liability arising out of, resulting from, or caused by the professional negligence, errors or omissions of DESIGN PROFESSIONAL, CONSULTANT, or any of their respective agents, officers, directors or employees.

6.02 Supervision and Superintendence

A. CONTRACTOR shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent of the Work, who shall not be replaced without written request to and approval by CITY except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

C. If it is determined to be in the best interest of the Work, CONTRACTOR shall replace the project manager, resident superintendent or any other employee of the CONTRACTOR, Subcontractors, Suppliers or other persons or organizations performing or furnishing any of the Work on the project upon written request by the CITY.

6.03 Services, Working Hours, Labor, Materials and Equipment

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out and construct or perform the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the Site shall be performed during regular working hours. CONTRACTOR shall not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without CITY's written consent given after prior written notice to DESIGN PROFESSIONAL.

B. Unless otherwise specified in Division 1, General Requirements, CONTRACTOR shall furnish and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

C. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of CITY. If required by DESIGN PROFESSIONAL, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

D. It is the policy of the CITY that any manufactured goods or commodities used or supplied in the performance of this Contract and any subcontract hereto shall be manufactured or produced in the United States whenever possible.

6.04 Progress Schedule

A. CONTRACTOR shall adhere to the progress schedule established in accordance with Article 2 as it may be adjusted from time to time as provided below:

1. CONTRACTOR shall provide, at least once every thirty (30) calendar days, updated information on the project schedule, including thirty (30) day look ahead schedules, projected variances per event category and per Subcontractor, identification of all variances and calculation of the number of Days difference between the as-built critical path and the project schedule critical path

2. CONTRACTOR shall, with each application for payment, provide completed monthly updated status report for the previous month on the project schedule and updated information indicating as-built and as-planned conditions. The updated information on the project schedule shall not modify any Milestone dates in the project schedule that CITY has previously approved. The updated information required is a condition precedent to payment pursuant to paragraph 14.02 and shall include at a minimum:

a. a concise statement of the outlook for meeting project schedule dates and the reasons for any change in outlook from the previous report;

b. a review of any significant technical problems encountered during the month;

c. an explanation of any corrective action taken or proposed; and

d. a summary of any Claims anticipated by CONTRACTOR with respect to the Work, including the anticipated costs and schedule impacts of any such Claims.

6.05 Recovery Schedules

A. If the CONTRACTOR should:

1. fail, refuse or neglect to supply a sufficient number of workers or to deliver the materials or equipment with such promptness as to prevent the delay in the progress of the Work;

2. fail in any respect to commence and diligently prosecute the Work in accordance with the approved baseline project schedule in order to achieve substantial completion;

3. fail to commence, prosecute, finish, deliver or install the different portions of the Work on time as specified in the approved baseline project schedule; or

4. fail in the performance of any of the material covenants of the Contract Documents;

CITY shall have the right to direct the CONTRACTOR, upon seven (7) calendar days notice, to prepare a written recovery plan, for CITY's approval, to accelerate the Work in order to conform to the approved baseline project schedule, including, without limitation, providing additional labor or expediting delivery of materials, performing overtime or re-sequencing the Work without adjustments to the Contract value. Upon CITY's approval of the recovery plan, CONTRACTOR shall accelerate the Work in accordance with the plan.

B. Proposed recovery schedules shall be submitted to the CITY as a separate project plan for review and approval by CITY prior to incorporation into the approved baseline schedule. The recovery schedule shall be submitted in a format compatible with the baseline schedule format. Each proposed revision shall be submitted as a separate schedule, with the following minimum requirements:

1. A critical path method diagram showing revised and affected activities or Milestones.

2. An activity report for all revised and affected activities or Milestones.

C. Upon acceptance of the recovery schedule by CITY, data shall be added or revised for all new or revised activities and incorporated into the approved baseline project schedule.

6.06 Substitutes and "Or-Equal" Items

A. Materials or equipment: Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance and quality required. Unless the specification or description contains, or is followed by, words reading that no like, equivalent or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to CITY for review by CITY's Representative under the following circumstances:

1. "Or-Equal": If, prior to receipt of Bids, Bidder proposes an item of material or equipment as functionally equal to that named and sufficiently similar so that no change in related Work will be required, CITY's Representative may request DESIGN PROFESSIONAL to consider it as an "or-equal" item. DESIGN PROFESSIONAL will review and recommend the acceptance, or rejection, of the proposed item to the CITY's Representative. For the purposes of this Paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment DESIGN PROFESSIONAL determines that:

(1) it is at least equal in quality, durability, appearance, strength, and design characteristics; and

(2) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole; and

b. Bidder certifies that:

(1) there is no increase in cost to the CITY; and

(2) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

If the CITY's Representative approves the proposed item, it may be accepted by CITY.

2. Substitute Items: If CONTRACTOR proposes an item of material or equipment as a substitute item, then CONTRACTOR shall submit sufficient information as provided below to allow CITY's Representative to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefore. The procedure for review by the CITY's Representative will include the following as supplemented in the General Requirements and as CITY's Representative may determine is appropriate under the circumstances:

a. Requests for review of proposed substitute items of material or equipment will not be accepted by CITY's Representative from anyone other than CONTRACTOR.

b. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall first make written application to CITY's Representative for acceptance thereof.

c. In the application, CONTRACTOR shall certify that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified and be suited to the same use as that specified. The application will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will impact CONTRACTOR's achievement of Substantial Completion, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with CITY for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty.

d. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by CITY's Representative in evaluating the proposed substitute. CITY's Representative may require CONTRACTOR to furnish additional data about the proposed substitute.

If the CITY's Representative approves the proposed item, CITY may accept it.

B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to DESIGN PROFESSIONAL. CONTRACTOR shall notify CITY and submit sufficient information to allow DESIGN PROFESSIONAL, in DESIGN PROFESSIONAL's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents.

C. Expenses: Bidder shall provide all data in support of any "or equal" at Bidder's expense, and CONTRACTOR shall provide all data in support of any proposed substitute at CONTRACTOR's expense.

D. Evaluation: DESIGN PROFESSIONAL and CITY's Representative will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.06 A, and 6.06 B. CITY will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized without CITY's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. CITY may require CONTRACTOR to furnish at CONTRACTOR's expense, a special performance guarantee or other surety with respect to any "or-equal' substitute. DESIGN PROFESSIONAL will record time required by DESIGN PROFESSIONAL and Consultants in evaluating substitutes proposed or submitted by CONTRACTOR pursuant to Paragraphs 6.06 A and 6.06 B and in making changes in the Contract Documents (or in the provisions of any other direct contract with CITY for work on the Project) occasioned thereby. Whether or not CITY accepts a substitute so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse CITY for the reasonable charges of DESIGN PROFESSIONAL and Consultants for evaluating each such proposed substitute.

6.07 Concerning Subcontractors, Suppliers and Others

A. CONTRACTOR shall not employ or retain any Subcontractor, Supplier or other person or organization (including those acceptable to CITY as indicated in Paragraph 6.07 B), whether initially or as a substitute, against whom CITY has a reasonable objection, including but not limited to debarment by City or another governmental entity or decertification of the Subcontractor from the City's Minority and Women's Business Enterprise Program as a result of the Subcontractor's failure to comply with any of the requirements of the provisions of Chapter 3 of the City's Code as determined by the Director of the Human Relations Department. Contractor shall insert this provision in any subcontractor agreement associated with this Contract. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection. CONTRACTOR shall submit required information for all Subcontractors on Form 01290.09 - Subcontractor and Major Material Suppliers List, provided in these Contract Documents, prior to Subcontractor beginning Work at the Site.

B. The Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials or equipment) to be submitted to CITY on or before the date specified in the Supplementary Conditions, for acceptance by CITY. If CONTRACTOR has submitted a list

thereof in accordance with the Supplementary Conditions, CITY may accept (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Contract Documents) any such Subcontractor, Supplier or other person or organization so identified, or may reject same on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier or other person or organization. The Contract Price will be adjusted by the difference in the cost occasioned by such substitution, and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by CITY of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of CITY or DESIGN PROFESSIONAL to reject defective Work.

C. CONTRACTOR shall be fully responsible to CITY for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between CITY or DESIGN PROFESSIONAL and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of CITY or DESIGN PROFESSIONAL to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws or Regulations.

D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

E. CONTRACTOR shall contractually require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with CITY and DESIGN PROFESSIONAL through CONTRACTOR.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier shall be pursuant to an appropriate written agreement between CONTRACTOR and the Subcontractor or Supplier that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of CITY. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against CITY, CONTRACTOR, DESIGN PROFESSIONAL, Consultants and all other additional insureds for all losses and damages caused by, arising out of or resulting from any perils, to the extent covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

H. Except as otherwise provided in this subsection H and in accordance with the provisions of subsection C hereof, the agreement between CONTRACTOR and the Subcontractor or Supplier referred to in subsection G, shall provide that the CONTRACTOR and the Subcontractor or Supplier agree not to request CITY or CITY's Representative to intervene in or facilitate the resolution of claims or contract disputes arising out of or related to the agreement between CONTRACTOR and the Subcontractor or Supplier. Furthermore, the Contracts between CONTRACTOR and Subcontractors or Suppliers shall provide that all unresolved claims and disputes between CONTRACTOR and the Subcontractor or Supplier that remain unresolved after thirty (30) calendar days from the notice of claim, shall be subject to mediation as a condition precedent to the institution of legal proceedings by either party. Any such mediation shall be conducted in accordance with the CITY's Code Section 3-467.

I. CONTRACTOR shall not insert any provision in any subcontractor agreement associated with this Contract that explicitly states or implies that the subcontractor shall only be paid for work performed if or when the general CONTRACTOR is paid by the CITY . Contractor's compliance with this provision is a material term of this Contract.

J. CONTRACTORS shall not deny any Subcontractor subcontracting opportunities solely because the Subcontractor is not a signatory to collective bargaining agreements with organized labor.

6.08 Patent Fees and Royalties

A. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation into the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work, and if to the actual knowledge of CITY or DESIGN PROFESSIONAL its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by CITY in the Contract Documents. To the fullest extent permitted by Laws or Regulations, CONTRACTOR shall defend, indemnify and hold harmless CITY, DESIGN PROFESSIONAL, Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation into the Work of any invention, design, process, product or device not specified in the Contract Documents.

6.09 Permits

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. CITY shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Contract. CONTRACTOR shall pay all charges of utility owners for connections to the Work.

B. CONTRACTOR, at its own expense, shall comply with all Federal, State and local laws and regulations, including, but not limited to the Missouri Clean Water Law (Chapter 644 RSMo) together with any accompanying regulation(s) contained in the Missouri Code of State Regulations (CSR Title 10), as well as any implementing permits, together with any CITY Provisions during the life of this Contract including but not limited to:

1. Approvals and permits as required for construction or land disturbance activities.

2. Compliance with the State of Missouri – Department of Natural Resources ("MDNR") Missouri State Operating Permit ("Land Disturbance Permit"), MO-R100006 for all construction or land disturbance activity.

3. Development and implementation of a Storm Water Pollution Prevention Plan (SWPPP).

(a) Contractor shall not commence land disturbance activity until the initial SWPPP has been finalized.

(b) Preparation and submittal of all applications, documentation and exhibits required to obtain MDNR approvals for uninterrupted Work at the Site.

(c) Amending/Updating SWPPP.

(d) Site Inspections and submittal of Inspection Reports

(e) Proper Operation and Maintenance to achieve compliance with the terms of the Permit.

(f) Maintenance of required records in accordance with MDNR requirements and requirements included in Article 6 of these Contract Documents.

4. In addition to requirements of Article 6, Contractor shall also provide record access to Missouri Department of Natural Resources (MDNR).

5. Failure to control erosion and water pollution is a permit violation. CONTRACTOR shall have 24 hours after receiving notice of the violation to correct the problem. If the CONTRACTOR fails to correct the problem after the time prescribed, the City will hire a remediation expert to fix the problem. In such an event, the CONTRACTOR shall be liable to the City for the remediation costs plus a 10% mark-up of the total contract price. If the CONTRACTOR receives three (3) notices of violation of the erosion control plan and the City's MS4 permit, the Director may issue a stop work order and delay any payment until control measures are properly functioning and stream damage has been mitigated. In such an event, any delay to the project schedule will result in liquidated damages assessed against the CONTRACTOR.

6.10 Compliance with Laws and Regulations

A. CONTRACTOR shall give all notices and comply with all Laws or Regulations applicable to furnishing and performing the Work. Except where otherwise expressly required by applicable Laws or Regulations, neither CITY nor DESIGN PROFESSIONAL shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations. The Laws or Regulations included in this Paragraph shall include, but not be limited to, those set forth in the Supplementary Conditions.

B. **Failure to Comply**. If CONTRACTOR performs any Work in violation of applicable Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting therefrom; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws or Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under Paragraph 3.03.

C. **Conflicts of Interest**. The provisions of City's Code Sections 2-1015 and 3-301, prohibiting City officers and employees from having a financial or personal interest in any contract with City, and Code Sections 3-307, and 3-309, imposing sanctions for violations, shall apply to this Contract. CONTRACTOR certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Contract, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement concerning employment to perform services on behalf of CONTRACTOR on this Contract.

D. **Licenses and Permits**. CONTRACTOR, at its own expense, shall secure or cause to be secured all licenses and permits from public or private sources necessary for the fulfillment of its obligations under this Contract. All references in this Contract to the "Code" shall mean City's Code of Ordinances, including any amendments thereto or re-codification thereof unless the context clearly indicates otherwise. CONTRACTOR shall obtain copies of all necessary licenses and permits from Subcontractors required for the Work before Subcontractors begin Work at the Site. CONTRACTOR shall retain such evidence in its files and make available to CITY within ten (10) days after CITY's written request.

E. Americans with Disabilities Act. CONTRACTOR agrees to comply, during the course of this Contract, with all provisions of Title II of the 2010 ADA Standards for Accessible Design as amended from time to time.

F. Affirmative Action. If the Contract Price exceeds $300,000.00 and CONTRACTOR employs fifty (50) or more people, CONTRACTOR shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto. CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City's Code.

CONTRACTOR shall:

1. Submit, in print or electronic format, a copy of CONTRACTOR'S current certificate of compliance to the City's Human Relations Department (HRD) prior to receiving the first payment under the contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years. If, and only if, CONTRACTOR does not possess a current certification of compliance, CONTRACTOR shall submit, in print or electronic format, a copy of its affirmative action program to HRD prior to receiving the first payment under the contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years.

2. Require any Subcontractor awarded a subcontract exceeding $300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.

3. Obtain from any Subcontractor awarded a subcontract exceeding $300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, CONTRACTOR shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by City's Human Relations Department to enforce this provision. If CONTRACTOR fails, refuses or neglects to comply with the provisions of Chapter 3 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and CONTRACTOR may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

G. **Minority and Women Business Enterprises and Workforce**. City is committed to ensuring that minorities and women participate to the maximum extent possible in the performance of City's construction contracts. If minority and women business enterprise (M/WBE) goals have been set for this Contract, CONTRACTOR agrees to comply with all requirements of City's Minority and Women's Business Enterprise Program as enacted in City's Code, Sections 3-421 through 3-469 and as hereinafter amended. CONTRACTOR shall meet or exceed both the MBE and WBE goals set forth in its Contractor Utilization Plan/Request for Waiver. If workforce utilization goals are applicable to this Contract, CONTRACTOR agrees to comply with all requirements of City's Construction Employment Program as enacted in City's Code, Sections 3-501 through 3-525 and as hereinafter amended. CONTRACTOR shall meet or exceed the construction employment goals unless the same shall have been waived in the manner provided by law. CONTRACTOR's compliance with this provision is a material part of this Contract.

H. **Records.**

1. For purposes of this section:

(a) "City" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Human Relations, the City Manager, the City department administering this Contract and their delegates and agents.

(b) “Record” shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.

2. Contractor shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. City shall have a right to examine or audit all Records and Contractor shall provide access to City of all records upon ten (10) days written notice from the City.

I. **Prevailing Wage.**

1. CONTRACTOR shall comply and require its Subcontractors to comply with;

a. sections 290.210 to 290.340, RSMO the State of Missouri Prevailing Wage Law (the “Law”); and

b. 8 CSR 30-3.010 to 8 CSR 30-3.060, the Prevailing Wage Law Rules (the “Rules”); and

c. the Annual Wage Order (Wage Order) issued by the State of Missouri’s Department of Labor and Industrial Relations; and

d. any applicable Annual Incremental Wage Increase (Wage Increase) to the Annual Wage Order.

2. The Law, Rules, Annual Wage Order and any Wage Increase are incorporated into and made part hereof this Contract and shall be collectively referred to in this Section as the “Prevailing Wage Requirements.”

3. CONTRACTOR shall pay and require its Subcontractors to pay to all workers performing work under this Contract not less than the prevailing hourly rate of wages for the class or type of work performed by the worker in accordance with the Law, Rules, Wage Order and any applicable Wage Increase. CONTRACTOR shall take whatever steps are necessary to insure that the prevailing hourly wage rates are paid and that all workers for CONTRACTOR and each of its Subcontractors are paid for the class or type of work performed by the worker in accordance with the Prevailing Wage Requirements. If CONTRACTOR shall fail to start to perform CONTRACTOR’s obligations under the Contract Documents within sixty (60) days from the Effective Date of the Contract, CONTRACTOR and each of its subcontractors shall be obligated to pay all workers in accordance with any new Wage Order, as subsequently amended by any applicable Wage Increase, issued by the Department of Labor and Industrial Relations within the aforementioned sixty (60) day period. The new Wage Order and any applicable Wage Increase shall govern notwithstanding the fact that the Wage Order being replaced might be physically attached or incorporated in the Contract Documents.

4. Prior to each of its Subcontractors beginning Work on the Site, CONTRACTOR shall require each Subcontractor to complete CITY’s Form 00490 entitled “Pre-contract Certification” that sets forth the Subcontractor’s prevailing wage and tax compliance history for the two (2) years prior to the bid. CONTRACTOR shall retain one (1) year and make the Pre-contract Certifications available to CITY within five (5) days after written request.

5. CONTRACTOR shall:

a. Keep and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to keep full and accurate records on City’s “Daily Labor Force Report” Form indicating the worker’s name, occupational title or classification group & skill and the workers’ hours. City shall furnish blank copies of the Daily Labor Force Report Form to Contractor for its use and for distribution to Subcontractors. Contractor shall submit its and its Subcontractors Daily Labor Force Reports to City each day; and

b. Submit, and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to submit electronically, in a format prescribed by the City, Certified Payroll Report Information indicating the worker's name, address, social security number, occupation(s), craft(s) of every worker employed in connection with the public work together with the number of hours worked by each worker and the actual wages paid in connection with the Project and other pertinent information as requested by the City; and

c. Submit, and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to submit, electronically, in format prescribed by the City, a Payroll Certification. The Payroll Certification must be signed by the employee or agent who pays or supervises the payment of the workers employed under the Contract for the Contractor and each Subcontractor; and

d. The Daily Labor Force Report, documents used to compile information for the Certified Payroll Report, and Payroll Certification are collectively referred to in this Section as the "Records."

6. CONTRACTOR shall submit its and its Subcontractors Daily Labor Force Reports to CITY each day. CONTRACTOR shall make all of CONTRACTOR's and Subcontractors' Records open to inspection by any authorized representatives of OWNER and the Missouri Department of Labor and Industrial Relations at any reasonable time and as often as they may be necessary and such Records shall not be destroyed or removed from the State of Missouri for a period of one (1) year following the completion of the public work in connection with which the Records are made. CONTRACTOR shall have its and its Subcontractors Certified Payroll Reports and Payroll Certifications available at the CONTRACTOR's office and shall provide the Records to the City electronically at City's sole discretion. In addition, all Records shall be considered a public record and CONTRACTOR shall provide the Records to the CITY in the format required by the CITY within three (3) working days of any request by CITY at the CONTRACTOR's cost. CITY, in its sole discretion, may require CONTRACTOR to send any of the Records directly to the person who requested the Record at CONTRACTOR's expense.

7. CONTRACTOR shall post and keep posted a clearly legible statement of all prevailing hourly wage rates to be paid to all workers employed by CONTRACTOR and each of its Subcontractors in the performance of this Contract in a prominent and easily accessible place at the Site of the Work by all workers.

8. If the Contract Price exceeds $250,000.00, CONTRACTOR shall and shall require each Subcontractor engaged in any construction of public works to have its name, acceptable abbreviation or recognizable logo and the name of the city and state of the mailing address of the principal office of the company, on each motor vehicle and motorized self-propelled piece of equipment which is used in connection with the Project during the time the CONTRACTOR or Subcontractor is engaged on the project. The sign shall be legible from a distance of twenty (20') feet, but the size of the lettering need not be larger than two (2") inches. In cases where equipment is leased or where affixing a legible sign to the equipment is impractical, the CONTRACTOR may place a temporary stationary sign, with the information required pursuant to this section, at the main entrance of the Project in place of affixing the required information on the equipment so long as such sign is not in violation of any state or federal statute, rule or regulation. Motor vehicles which are required to have similar information affixed thereto pursuant to requirements of a regulatory agency of the state or federal government are exempt from the provisions of this subsection.

9. CONTRACTOR must correct any errors in CONTRACTOR's or any Subcontractors' Records, or CONTRACTOR's or any Subcontractors' violations of the Law, Rules, Annual Wage Order and any Wage Increase within fourteen (14) calendar days after notice from CITY.

10. CONTRACTOR shall and shall require its Subcontractors to cooperate with the CITY and the Department of Labor and Industrial Relations in the enforcement of this Section, the Law, Rules, Annual Wage Order and any Wage Increase. Contractor shall and shall require its Subcontractors to permit CITY and the Department of Labor and Industrial Relations to interview any and all workers during working hours on the Project at CONTRACTOR's sole cost and expense.

11. CONTRACTOR shall file with CITY, upon completion of the Project and prior to final payment therefore, affidavits from CONTRACTOR and each of its Subcontractors, stating that each has fully complied with the provisions and requirements of the Missouri Prevailing Wage Law. CITY shall not make final payment until the affidavits, in proper form and order, from CONTRACTOR and each of its Subcontractors, are filed by CONTRACTOR.

12. CONTRACTOR shall forfeit as a statutory penalty to the CITY one hundred dollars ($100.00) for each worker employed, for each calendar day, or portion thereof, such worker is paid less than the prevailing hourly rates for any work done under this Contract, by CONTRACTOR or by any of CONTRACTOR's Subcontractors. If CONTRACTOR or any of its Subcontractors have violated any section(s) of 290.210 to 290.340, RSMo, in the course of the execution of the Contract, CITY shall when making payments to the CONTRACTOR becoming due under this Contract, withhold and retain therefrom all sums and amounts due and owing as a result of any violation of sections 290.210 to 290.340, RSMo.

J. **Prevailing Wage Damages**. CONTRACTOR acknowledges and agrees that, based on the experience of CITY, violations of the Missouri Prevailing Wage Act, whether by CONTRACTOR or its Subcontractors, commonly result in additional costs to CITY. CONTRACTOR agrees that additional costs to CITY for any particular violation are difficult to establish and include but are not limited to: costs of construction delays, additional work for CITY, additional interest expenses, investigations, and the cost of establishing and maintaining a special division working under the City Manager to monitor prevailing wage compliance.

1. In the event of the failure by CONTRACTOR or any of its Subcontractors to pay wages as provided in the Missouri Prevailing Wage Act, CITY shall be entitled to deduct from the Contract Price, and shall retain as liquidated damages, one hundred dollars ($100.00) per day, per worker who is paid less than the prevailing hourly rate of wages, to approximate the additional costs. The sum shall be deducted, paid or owed whether or not the Contract Times have expired.

2. CITY shall give written notice to CONTRACTOR setting forth the workers, who have been underpaid, the amount of the statutory penalty and the amount of the liquidated damages as provided for in this Subparagraph **J.** CONTRACTOR shall have fourteen (14) calendar days to respond, which time may be extended by CITY upon written request. If CONTRACTOR fails to respond within the specified time, the CITY's original notice shall be deemed final. If CONTRACTOR responds to CITY's notice, CITY will furnish CONTRACTOR a final decision in writing within five (5) days of completing any investigation.

K. **Missouri Secretary of State Business Entity Registration**. CONTRACTOR shall obtain from all Subcontractors for the Project, a copy of their current certificate of good standing or fictitious name registration from the Missouri Secretary of State before they begin work on the Site. CONTRACTOR shall retain such documents in its files and make available to CITY within ten (10) days after written request.

L. **Tropical Hardwoods**. The provisions of Code Section 2-1872, restricting the use of tropical hardwoods, shall apply to this Contract.

M. **Preference for Missouri Products**. Pursuant to Section 71.140 RSMo., preference shall be given to materials, products, supplies and all other articles produced, manufactured, made or grown within the State of Missouri.

N. **Guidelines for Open Excavations**.

1. CONTRACTOR shall restore required excavations to the level of the adjacent surfaces as soon as practicable. Unsupervised open excavations on public properties are discouraged at all times. If CONTRACTOR, in performance of the Work, makes or causes to be made any excavation in, upon, under, through or adjoining any street, sidewalk, alley, park, boulevard, parkway or any other public properties, and shall leave any part or portion thereof open, CONTRACTOR shall provide effective protection to the public.

2. CONTRACTOR shall protect and secure all excavations in roadways in compliance with existing federal, state and local codes and standards, including, but not limited to the most current edition of the Manual of Uniform Traffic Control Devices. CONTRACTOR shall protect and secure all unsupervised excavations not within roadways, either by covering or fencing.

a. Covering. A protective cover that can sustain the weight of persons or of objects that are placed upon it may be installed over an unsupervised excavation. The cover shall be secured to the ground to prevent movement. Protective covers shall have no opening(s) or protuberance(s) of sufficient size to cause a fall and/or injury. Advance warning devices shall be installed as necessary.

b. Fencing. Fencing to prevent entry may be installed surrounding an unsupervised excavation not protectively covered in its entirety. The fencing shall be a minimum of 42" in height. The fencing shall be constructed in such a manner that it is adequately secured and will remain upright at all times under normal Site conditions. All protective coverings and fences over and around excavations shall be inspected at least daily to assure integrity. Protective coverings and/or fences in heavily trafficked areas shall be inspected more often as necessary.

O. **Notification of Utilities**. CONTRACTOR shall adhere to the provisions of Sections 319.010 et seq., RSMo., which requires that a person or firm making an excavation in any public street, road or alley, right of way dedicated to public use, utility easement of record, or within any private street or private property do so only after giving notice to, and obtaining information from, owners of Underground Facilities. The 24-hour, toll-free accident prevention hotline number in Missouri is 1-800-344-7483 (1-800-Digrite).

P. Employee Eligibility Verification. CONTRACTOR shall adhere to the provisions of Sections 285.525 et seq., RSMo., which requires that for any contract exceeding five thousand dollars ($5,000.00), CONTRACTOR shall execute and submit an affidavit, in a form prescribed by CITY, affirming that CONTRACTOR does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C.§ 1324a(h)(3). CONTRACTOR shall attach to the affidavit documentation sufficient to establish CONTRACTOR'S enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986. CONTRACTOR may obtain additional information about E-Verify and enroll at https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES. For those Contractors enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that CONTRACTOR will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this Section. CONTRACTOR shall submit the affidavit and attachments to CITY prior to execution of the Contract, or at any point during the term of the Contract if requested by City.

Q. **OSHA 10-Hour Training Requirement**. CONTRACTOR and any subcontractor working under this Contract shall require every employee on the Site to complete a ten-hour construction safety program which meets the requirements of Section 292.675, RSMo, except for those employees who shall have previously completed the required program and hold documentation to that effect. CONTRACTOR shall remove or require the removal of any

person from the Site who is subject to this requirement and who does not complete or is unable to produce documentation of their successful completion of the required program within the time limitations prescribed by Section 292.675, RSMo. CONTRACTOR shall forfeit the sum of two thousand five hundred dollars ($2,500.00), in addition to one hundred dollars ($100.00) per employee each calendar day, or portion thereof, the employee(s) shall continue to be employed without having completed the required program within the time limitations prescribed by Section 292.675, RSMo. CITY shall be entitled to withhold and retain any amounts due and owing hereunder when making payment to CONTRACTOR.

R. Clean Air Act and Clean Water Act. CONTRACTOR shall comply with requirements of the Clean Air Act (42 U.S.C. 7401 *et seq*.); Clean Water Act (33 U.S.C. 1251 *et seq*.), Missouri Clean Water Law (Chapter 644 RSMo), Code of Federal regulations (Title 40: Protection of Environment, Title 33: Navigation and Navigable Waters) and the rules of the Missouri Code of State Regulations (CSR Title 10).

S. Contract information Management System. If applicable, CONTRACTOR shall comply with CITY's Contract Information Management System requirements. CONTRACTOR shall use CITY's Internet web based Contract Information Management System/Project Management Communications Tool provided by CITY and protocols included in that software during the term of this Contract. CONTRACTOR shall maintain user applications to CITY's provided system for all personnel, subcontractors or suppliers as applicable and shall require subcontractors/subconsultants to maintain same.

6.11 Taxes

A. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws or Regulations of the place of the Project which are applicable during the performance of the Work.

B. **Tax Compliance**.

1. As a condition precedent to CITY making its first payment to CONTRACTOR under this Contract, CONTRACTOR shall furnish to CITY sufficient proof from City's Commissioner of Revenue, dated not more than one (1) year prior to the date provided to CITY, verifying that CONTRACTOR is in compliance with the license and tax ordinances administered by City's Revenue Division of the Finance Department.

2. As a condition precedent to Subcontractors performing any Work under this Contract, CONTRACTOR shall obtain from Subcontractor sufficient proof from City's Commissioner of Revenue, dated not more than one (1) year before the date Subcontractor begins Work, verifying that the Subcontractor is in compliance with the license and tax ordinances administered by City's Revenue Division of the Finance Department. CONTRACTOR shall retain such documentation in its files and make available to CITY within ten (10) days after a written request.

3. As a condition precedent to CITY making final payment under this Contract, if this Contract is longer than one (1) year and exceeds the dollar threshold established by ordinance and included in the Supplementary Conditions, CONTRACTOR shall furnish to CITY sufficient proof from City's Commissioner of Revenue, dated not more than one (1) year before the filing of a final Application for Payment, verifying that CONTRACTOR is in compliance with the license and tax ordinances administered by City's Revenue Division of the Finance Department.

4. If this Contract is longer than one (1) year and exceeds the dollar threshold established by ordinance and included in the Supplementary Conditions, CONTRACTOR shall obtain from Subcontractors sufficient proof from City's Commissioner of Revenue, dated not more than one (1) year before the date of CONTRACTOR's final payment to the Subcontractor, that the Subcontractor was or is in compliance with the license and tax ordinances administered by City's Revenue Division of the Finance Department.

CONTRACTOR shall retain such documentation in its files and make available to CITY within ten (10) days after written request.

5. If, at the time of final payment to CONTRACTOR, CONTRACTOR is unable to obtain from all its Subcontractors, if any, and furnish to CITY sufficient proof from City's Commissioner of Revenue that all its Subcontractors are in compliance with the license and tax ordinances administered by City's Revenue Division of the Finance Department, CITY may approve final payment to CONTRACTOR if CITY determines that CONTRACTOR has made a good faith effort to furnish evidence or that there are other extenuating circumstances which make it impossible for CONTRACTOR to furnish sufficient proof.

C. **Missouri Sales Tax Exemption**. Pursuant to Section 144.062, RSMo, CITY is a Missouri exempt entity and tangible personal property to be incorporated or consumed in the construction of this Project may be purchased without sales tax. CITY shall furnish CONTRACTOR a Missouri Project Exemption Certificate for Sales Tax at the time of issuance of the Notice to Proceed.

6.12 Use of Site and Other Areas

A. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas identified in and permitted by the Contract Documents and other areas permitted by Laws or Regulations. CONTRACTOR shall not unreasonably encumber the Site and the other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to the Site or the other areas, or to the owner or occupant thereof, or of any adjacent land or areas, resulting from the performance of the Work.

B. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. In case of a failure on the part of the CONTRACTOR to restore such property or to make good such damage or injuries, the CITY may, upon forty-eight (48) hours written notice to the CONTRACTOR, repair, rebuild or otherwise restore such property as the CITY may deem necessary, and the cost thereof will be deducted from any moneys due or which may become due the CONTRACTOR under this Contract.

C. CONTRACTOR shall, to the fullest extent permitted by Laws or Regulations, defend, indemnify and hold harmless CITY, DESIGN PROFESSIONAL, Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against CITY, DESIGN PROFESSIONAL or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

D. During the progress of the Work, CONTRACTOR shall keep the Site and the other areas free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from Site and other areas as well as all tools, appliances, construction equipment and machinery and surplus materials. CONTRACTOR shall leave the Site clean and ready for utilization or occupancy by CITY at Substantial Completion of the Work. CONTRACTOR shall restore to all property not designated for alteration by the Contract Documents to its pre-Work condition.

E. CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.13 Record Documents

A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, the Contract, Written Amendments, Change Orders, Work Change Directives, and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents, together with all approved Samples and a counterpart of all approved Shop Drawings, will be available to CITY and DESIGN PROFESSIONAL for reference. Upon completion of the Work, these record documents, Samples and Shop Drawings will be delivered to DESIGN PROFESSIONAL for CITY.

6.14 Safety and Protection

A. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall comply with all applicable Laws or Regulations relating to the safety of persons or property to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for safety and protection. CONTRACTOR shall deliver to CITY a copy of CONTRACTOR'S Health and Safety Plan as provided in the Notice of Intent to Contract.

B. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in Paragraph 6.14 B.2 or 6.14 B.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of CITY, DESIGN PROFESSIONAL, Consultant, or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR, Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and DESIGN PROFESSIONAL has issued a notice to CONTRACTOR in accordance with Paragraph 14.07 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion). CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of the Work.

6.15 Safety Representative

A. In accordance with OSHA standards, CONTRACTOR shall designate a qualified and experienced safety representative whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. CONTRACTOR's safety representative shall remain at the Site whenever there is Work in progress and shall immediately notify CITY of any emergencies or accidents occurring at the Site

6.16 Hazard Communication Programs

A. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.17 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CONTRACTOR, without special instruction or authorization from CITY or DESIGN PROFESSIONAL, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give CITY and DESIGN PROFESSIONAL prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If CITY determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to an emergency, a Work Change Directive or Change Order will be issued.

B. A change in the Contract Documents pursuant to Paragraph 6.15 A will not be an automatic authorization of, nor a condition precedent to, entitlement to adjustment in the Contract Price or Contract Times. If CITY and CONTRACTOR are unable to agree on entitlement to, or magnitude of, an equitable adjustment in the Contract Price or Contract Times, a Claim may be made therefore as provided in Article 16. However, OWNER, DESIGN PROFESSIONAL and Consultants shall not be liable to CONTRACTOR for any costs, losses or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

6.18 Shop Drawings and Samples

A. CONTRACTOR shall submit Shop Drawings to DESIGN PROFESSIONAL for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals (see Paragraph 2.07). All submittals shall be identified as DESIGN PROFESSIONAL may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show DESIGN PROFESSIONAL the services, materials and equipment CONTRACTOR proposes to provide and to enable DESIGN PROFESSIONAL to review the information for the limited purposes required by Paragraph 6.18 D.

B. CONTRACTOR shall also submit Samples to DESIGN PROFESSIONAL for review and approval in accordance with said accepted schedule of Shop Drawings and Sample submittals. Each Sample shall be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended and otherwise as DESIGN PROFESSIONAL may require to enable DESIGN PROFESSIONAL to review the submittal for the limited purposes required by Paragraph 6.18 D. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. **Submittal Procedures**:

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto;

b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the Work;

c. all information relative to means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto; and

d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submission, CONTRACTOR shall give DESIGN PROFESSIONAL specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, the notice to be in a written communication separate from the submittal, and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to DESIGN PROFESSIONAL for review and approval of each such variation.

D. **DESIGN PROFESSIONAL's Review**:

1. DESIGN PROFESSIONAL will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by DESIGN PROFESSIONAL as required by Paragraph 2.06. DESIGN PROFESSIONAL's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation into the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. DESIGN PROFESSIONAL's review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. DESIGN PROFESSIONAL's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called DESIGN PROFESSIONAL's attention to each such variation at the time of submission as required by Paragraph 6.18 C.3, and DESIGN PROFESSIONAL has given written approval of each such variation by specific written notation thereof incorporated into or accompanying the Shop Drawing or Sample approval; nor will any approval by DESIGN PROFESSIONAL relieve CONTRACTOR from responsibility for complying with the requirements of Paragraph 6.18 C.1.

E. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submissions accepted by DESIGN PROFESSIONAL as required by Paragraph 2.06, any related Work performed prior to DESIGN PROFESSIONAL's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

F. CONTRACTOR shall make corrections required by DESIGN PROFESSIONAL and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by DESIGN PROFESSIONAL on previous submittals.

6.19 Continuing the Work

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with CITY No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as CITY and CONTRACTOR may otherwise agree in writing.

6.20 CONTRACTOR's General Warranty and Guarantee

A. CONTRACTOR warrants and guarantees to CITY, DESIGN PROFESSIONAL and Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers or any other individual or entity for whom CONTRACTOR is responsible; or

2. normal wear and tear under normal usage.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. observations by DESIGN PROFESSIONAL;

2. recommendation of any progress or final payment by DESIGN PROFESSIONAL;

3. the issuance of a certificate of Substantial Completion or any payment related thereto by CITY to CONTRACTOR;

4. use or occupancy of the Work or any part thereof by OWNER;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by DESIGN PROFESSIONAL;

6. any inspection, test or approval by others; or

7. any correction of defective Work by CITY.

C. Nonconforming Work is rejected unless expressly accepted in writing by the CITY's Representative.

ARTICLE 7 OTHER WORK

7.01 Related Work at Site

A. CITY may perform other work related to the Project at the Site by CITY's own forces, or let other direct contracts therefore, or have other work performed by utility owners. If such other work is to be performed and such fact was not noted in the Contract Documents, then:

1. Written notice thereof will be given to CONTRACTOR prior to starting any such other work, and

2. CONTRACTOR may make a Claim therefore as provided in Article 16 if CONTRACTOR believes that such performance involves additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the amount or extent thereof.

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract, and each utility owner (and CITY, if CITY is performing the additional work with CITY's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of CITY and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of

CONTRACTOR in said direct contracts between CITY and such utility owners and other contractors.

C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to CITY and DESIGN PROFESSIONAL in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution or results of CONTRACTOR's Work. CONTRACTOR's failure to report same will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work, except for latent or non-apparent defects and deficiencies in such other work.

7.02 Coordination

A. If CITY contracts with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;
2. the specific matters to be covered by such authority and responsibility will be itemized; and
3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, CITY shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8 CITY'S RESPONSIBILITIES

8.01 Communications to CONTRACTOR

A. Except as otherwise provided in these General Conditions, CITY shall issue all communications to CONTRACTOR.

8.02 Replacement of DESIGN PROFESSIONAL

A. In case of termination of the employment of DESIGN PROFESSIONAL, CITY shall appoint a DESIGN PROFESSIONAL whose status under the Contract Documents shall be that of the former DESIGN PROFESSIONAL.

8.03 Furnish Data and Prompt Payment

A. CITY shall promptly furnish the data required of OWNER under the Contract Documents and shall make payments to CONTRACTOR when they are due.

8.04 Lands and Easements; Reports and Tests

A. CITY's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to CITY's duty to identify and make available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the Site and drawings of physical conditions in existing structures at or contiguous to the Site that have been utilized by DESIGN PROFESSIONAL in preparing the Contract Documents.

8.05 Insurance

A. CITY's responsibilities, if any, for purchasing and maintaining liability and property insurance are set forth in Article 5 and the Supplementary Conditions.

8.06 Change Orders

A. CITY is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.07 Inspections, Tests and Approvals

A. CITY's responsibility for certain inspections, tests and approvals is set forth in Paragraph 13.02 F.

8.08 Limitations on CITY's Responsibilities

A. The CITY shall not supervise, direct or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws or Regulations applicable to the furnishing or performance of the Work. CITY will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

8.09 Undisclosed Hazardous Environmental Condition

A. CITY's responsibility for an undisclosed Hazardous Environmental Condition uncovered or revealed at the Site is set forth in Paragraph 4.06.

8.10 Evidence of Financial Arrangements

A. CITY will furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract.

8.11 CITY's Representative

A. CITY will provide a representative during the construction period. The duties, responsibilities and the limitations of authority of the CITY "'s Representative during construction are set forth in the Contract Documents.

8.12 Visits to Site

A. CITY's Representative will make visits to the Site at intervals appropriate to the various stages of construction as CITY's Representative deems necessary in order to observe the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, CITY's Representative will endeavor to determine, in general, if the Work is proceeding in accordance with the Contract Documents. CITY's Representative will not be required to make exhaustive or continuous on-Site inspections to check the quality or quantity of the Work.

ARTICLE 9 DESIGN PROFESSIONAL's STATUS DURING CONSTRUCTION

9.01 General Scope of DESIGN PROFESSIONAL's Duties

A. DESIGN PROFESSIONAL's efforts will be directed toward providing for CITY a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of visits to the Site and on-Site observations, DESIGN PROFESSIONAL will keep CITY informed of the progress of the Work and will endeavor to guard CITY against defective Work. DESIGN PROFESSIONAL's visits to the Site and on-Site observations are subject to all the limitations on DESIGN PROFESSIONAL's authority and responsibility set forth in Paragraph 9.08.

9.02 Resident Project Representative

A. If CITY and DESIGN PROFESSIONAL agree, DESIGN PROFESSIONAL will furnish a resident Project representative to assist DESIGN PROFESSIONAL in providing more extensive observation of the Work. The responsibilities, authority and limitations thereon of any such resident Project representative and assistants will be as provided in Paragraph 9.08 and in the Supplementary Conditions.

9.03 Clarifications and Interpretations

A. DESIGN PROFESSIONAL will issue with reasonable promptness written clarifications or interpretations (which may be in the form of Drawings) of the requirements of the Drawings

and Specifications prepared by the DESIGN PROFESSIONAL as DESIGN PROFESSIONAL may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on CITY and CONTRACTOR. If CITY or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Price pursuant to Article 11 and/ or the Contract Times pursuant to Article 12 and the parties are unable to agree to the amount or extent thereof, if any, a Claim may be made therefore as provided in Article 16.

9.04 Rejecting Defective Work

A. DESIGN PROFESSIONAL will have authority to disapprove or reject Work which DESIGN PROFESSIONAL believes to be defective, that DESIGN PROFESSIONAL believes will not produce a completed Project that conforms to the Contract Documents, or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. DESIGN PROFESSIONAL will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04 B, whether or not the Work is fabricated, installed or completed.

9.05 Shop Drawings, Change Orders and Payments

A. In connection with DESIGN PROFESSIONAL's authority as to Shop Drawings and Samples, see Paragraph 6.18.

B. In connection with DESIGN PROFESSIONAL's authority as to Change Orders, see Article 10.

C. In connection with DESIGN PROFESSIONAL's authority as to Applications for Payment, see Article 14.

9.06 Determinations for Unit Prices

A. DESIGN PROFESSIONAL will initially determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. DESIGN PROFESSIONAL will review with CONTRACTOR the DESIGN PROFESSIONAL's preliminary determinations on such matters before rendering a written opinion thereon (by recommendation of an Application for Payment or otherwise to the CITY). CITY reserves the right to make a final determination of the actual quantities and classifications of Unit Price Work in reviewing an Application for Payment. Within ten (10) days after the date of receipt of any such decision, CONTRACTOR may deliver to CITY and to DESIGN PROFESSIONAL written notice of intention to appeal CITY's decision pursuant to Article 16.

9.07 Decisions on Requirements of Contract Documents and Acceptability of Work

A. DESIGN PROFESSIONAL will be the initial interpreter of the requirements of the Drawings and Specifications prepared by DESIGN PROFESSIONAL and judge of the acceptability of the Work thereunder.

B. When functioning as interpreter and judge under this Paragraph 9.07, DESIGN PROFESSIONAL will not show partiality to OWNER or CONTRACTOR.

C. Claims, disputes and other matters relating to the acceptability of the Work, quantities and classifications of Unit Price Work, or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work will be referred initially to CITY's Representative in writing with a request for a formal decision in accordance with Article 16.

9.08 Limitations on DESIGN PROFESSIONAL's Authority and Responsibilities

A. Neither DESIGN PROFESSIONAL's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by DESIGN PROFESSIONAL in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility by DESIGN PROFESSIONAL shall create, impose or give rise to any duty owed by DESIGN

PROFESSIONAL to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them.

B. DESIGN PROFESSIONAL will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws or Regulations applicable to the furnishing or performance of the Work. DESIGN PROFESSIONAL will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

C. DESIGN PROFESSIONAL will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

D. DESIGN PROFESSIONAL's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, Bonds and certificates of inspection, tests and approvals and other documentation required to be delivered by Paragraph 14.07 will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals, that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.08 shall also apply to DESIGN PROFESSIONAL's Consultants, resident Project representative and assistants as identified in the Supplementary Conditions.

ARTICLE 10 CHANGES IN THE WORK

10.01 Authorized Changes in the Work

A. Without invalidating the Contract and without notice to any surety, CITY may, at any time or from time to time, order additions, deletions or revisions in the Work. Such additions, deletions or revisions will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved that will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If CITY and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price pursuant to Article 11 or an adjustment of the Contract Times pursuant to Article 12 or both that should be allowed as a result of a Work Change Directive, a Claim may be made therefore as provided in Article 16.

10.02 Unauthorized Changes in the Work

A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.17 or in the case of uncovering Work as provided in Paragraph 13.04.

10.03 Signing of Change Orders

A. CITY and CONTRACTOR, and DESIGN PROFESSIONAL shall sign appropriate Change Orders covering:

1. changes in the Work which are:

    a. ordered by CITY pursuant to Paragraph 10.01 A; or

    b. required because of acceptance of defective Work under Paragraph 13.08 or correcting defective Work under Paragraph 13.09; or

    c. agreed to by the parties;

2. changes in the Contract Price or Contract Times or both which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times or both which embody the substance of any written decision recommended by DESIGN PROFESSIONAL and approved by CITY pursuant to Paragraph 9.06, provided that, in lieu of signing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws or Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in Paragraph 6.19.

10.04 Notification to Surety

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times or both) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 11 CHANGE OF CONTRACT PRICE

11.01 Change of Contract Price

A. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at CONTRACTOR's expense without change in the Contract Price.

B. The Contract Price may only be changed by a Change Order. Any request for an adjustment in the Contract Price shall be based on written notice delivered within fourteen (14) calendar days after occurrence of the event giving rise to the request or within fourteen (14) calendar days after first recognition of the conditions giving rise to the request. Prior notice is not required for requests or claims relating to an emergency endangering life or property as described in Paragraph 6.16. Thereafter, the CONTRACTOR shall submit written documentation of its request, including appropriate supporting documentation, within ten (10) calendar days after giving notice, unless the CITY grants an extension based on good cause shown by the CONTRACTOR that such additional time is warranted.

C. The value of any Work covered by a Change Order or of any request for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by Unit Prices contained in the Contract Documents, by application of such Unit Prices to the quantities of the items involved (subject to the provisions of Paragraph 11.04); or

2. where the Work involved is not covered by Unit Prices contained in the Contract Documents, by a mutually agreed lump sum; or

3. where the Work involved is not covered by Unit Prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 11.01 C.2, on the basis of the Cost of the Work (determined as provided in Paragraphs 11.02 A and B) plus a CONTRACTOR's fee for overhead and profit (determined as provided in Paragraph 11.01 D).

D. The CONTRACTOR's fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under Paragraphs 11.02 A.1 and 11.02 A.2, the CONTRACTOR's fee shall be ten percent (10%);

b. for costs incurred under Paragraph 11.02 A.3, the CONTRACTOR's fee shall be five percent (5%);

c. where one or more tiers of subcontracts are on the basis of the Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01 D.2 and 11.02 A.1 through A.3 is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be a paid a fee of ten percent (10%) of the costs incurred by such Subcontractor under Paragraphs 11.02 A.1 and 11.02 A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent (5%) of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.02 A.4, 11.02 A.5 and 11.02 B;

e. the amount of credit to be allowed by CONTRACTOR to CITY for any change which results in a net decrease in cost will be the amount of the actual net decrease in costs plus a deduction in CONTRACTOR's fee by an amount equal to five percent (5%) of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.01 D.2.a through 11.01 D.2.e, inclusive.

E. Whenever the Cost of the Work is to be determined pursuant to Paragraphs 11.02 A and B, CONTRACTOR shall establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to CITY an itemized cost breakdown together with supporting data.

11.02 Cost of the Work

A. The term "Cost of the Work" means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a request for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the request. Except as otherwise agreed to in writing by CITY, costs covered by Change Orders or requests shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any costs itemized in 11.02 B:

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work, using occupational titles and job classifications agreed upon by CITY and CONTRACTOR. Such employees shall include, without limitation, job Site superintendents, foremen and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers'" compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing the Work after regular working hours, on Saturdays, Sundays or legal holidays, shall be included in the above to the extent authorized by OWNER.

2. Cost of all materials and equipment furnished and incorporated into the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless CITY deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to CITY. All trade discounts, rebates and refunds and returns from

sale of surplus materials and equipment shall accrue to CITY, and CONTRACTOR shall make provisions so that they may be obtained.

3. Payments made by CONTRACTOR to Subcontractors for Work performed or furnished by Subcontractors. If required by CITY, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to CITY who will then determine, with the advice of DESIGN PROFESSIONAL, which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of the Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in Paragraphs 11.01 D and E and 11.02 A and B. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work when such services are approved in advance by CITY in writing.

5. Other costs including the following:

a. The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value of such items used but not consumed which remain the property of CONTRACTOR.

c. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by CITY with the advice of DESIGN PROFESSIONAL, and the costs of transportation, loading, unloading, installation, assembly, dismantling and removal thereof, all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

d. Applicable sales, consumer, use or similar taxes related to the Work**,** and for which CONTRACTOR is liable, imposed by Laws or Regulations.

e. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses required to perform the Work.

f. Losses and damages (and related expenses) caused by damage to the Work**,** not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by CITY in accordance with Article 5), provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of CITY. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for those services a fee proportionate to that stated in Paragraph 11.01 D.2.

g. The cost of utilities, fuel and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage and similar petty cash items in connection with the Work.

i. Cost of premiums for additional or increased Bonds, or for insurance required because of approved changes in the Work.

B. Costs excluded: The term "Cost of the Work" shall not include any of the following:

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the Site or in CONTRACTOR's principal or a branch office for general administration of the Work (if not specifically included in the agreed upon occupational titles and job classifications referred to in Paragraph 11.02 A.1 or specifically covered by Paragraph 11.02 A.4), all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site.

3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

4. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials, or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 11.02 A.

11.03 Cash Allowances

A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to CITY. CONTRACTOR agrees that:

1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued by CITY to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.04 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made in accordance with Paragraph 9.06.

B. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

C. CITY or CONTRACTOR may negotiate an adjustment of the price per unit of Unit Price Work stated in the Contract if:

1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs by twenty percent (20%) or more from the estimated quantity of such item indicated in the Contract; and

2. there is no corresponding adjustment with respect to any other item of Work; and

3. CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or CITY believes that CITY is entitled to a decrease in Contract Price.

11.05 Dispute Resolution

A. If CITY and CONTRACTOR are unable to agree on entitlement to, or magnitude of, an equitable adjustment in the Contract Price in accordance with Article 11 within fourteen (14) calendar days from the receipt of supporting documentation of the request pursuant to 11.01.B., unless the CITY grants an extension based on good cause shown by the CONTRACTOR that such additional time is warranted, then a Claim for such adjustment may be made pursuant to Article 16.

ARTICLE 12 CONTRACT TIMES

12.01 Time of the Essence

A. All times stated in the Contract Documents are of the essence of the Contract.

12.02 Change of Contract Times

A. The Contract Times (or Milestones) may only be changed by a Change Order. Any request for an adjustment in the Contract Times shall be based on written notice delivered within fourteen (14) calendar days after occurrence of the event giving rise to the request or within fourteen (14) calendar days after first recognition of the conditions giving rise to the request. Thereafter, the CONTRACTOR shall submit written documentation of its requests, including appropriate supporting documentation, within ten (10) days after giving notice, unless the CITY grants an extension based on good cause shown by the CONTRACTOR that such additional time is warranted.

12.03 Proof Required To Justify an Extension of Time For Excusable and Compensable Delays

A. In support of any request for an extension of the Contract Times pursuant to this Article, CONTRACTOR must demonstrate to the reasonable satisfaction of the CITY that the critical path of the approved baseline project schedule was delayed. CONTRACTOR shall be entitled to an increase in contract time for the number of days that the critical path was delayed solely as a result of the compensable or excusable event. A compensable or excusable event includes, but is not limited to:

1. unreasonable delay of issuance of Notice to Proceed by CITY;

2. CITY's unreasonable delay of delivery furnished materials, equipment, or work;

3. unreasonable delay responding to shop drawings and submittals;

4. CITY's unreasonable delay in issuing a Change Order;

5. an order by the CITY to stop the Work where the CONTRACTOR was not at fault; and

6. other reasonable grounds as determined by the City in its sole discretion.

B. CONTRACTOR shall compare the critical path of the approved baseline project schedule to the actual critical path of the Work, identifying the specific impact of the compensable or excusable event.

C. CONTRACTOR shall submit to the CITY a written time impact analysis illustrating the influence of each compensable or excusable event on the date of Substantial Completion. The time impact analysis shall demonstrate the time impact based on the date of the delay in time and the event time computations or all affected activities.

D. If the critical path of the Work is delayed by "Force Majeure", the CONTRACTOR shall be entitled only to an extension of the Contract Times for the number of days of delay to the critical path. For purposes of this paragraph, "Force Majeure" shall mean fire, tornado, flood, earthquake, war, act of terrorism, civil disturbance, or labor strikes away from the project site.

E. Extensions of contract time pursuant to the this section will be granted only to the extent that the time adjustments exceed the total float time available when the event causing the delay occurred.

12.04 Delays Within CONTRACTOR's Control

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.05 Delays Beyond the CITY's and CONTRACTOR's Control

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both CITY and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 Delay Damages

A. In no event shall CITY be liable to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR, or

2. delays beyond the control of CITY or CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this Paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inaction of CITY, DESIGN PROFESSIONAL, Consultant or anyone for whom CITY, DESIGN PROFESSIONAL or Consultant is responsible.

12.07 Dispute Resolution

A. If CITY and CONTRACTOR are unable to agree on entitlement to, or magnitude of, an equitable adjustment in the Contract Time in accordance with Article 12 within fourteen (14) calendar days from the receipt of supporting documentation of the request pursuant to 12.02, unless the CITY grants an extension based on good cause shown by the CONTRACTOR that such additional time is warranted, then a Claim for such adjustment may be made pursuant to Article 16.

ARTICLE 13 TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Access to Work

A. CITY, DESIGN PROFESSIONAL, Consultants, other representatives and personnel of CITY, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Site and Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide them proper and safe conditions for such access and

advise them of CONTRACTOR's Site safety procedures and programs so that they may comply therewith as applicable.

13.02 Tests and Inspections

A. CONTRACTOR shall give DESIGN PROFESSIONAL and CITY's Representative timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. If any Work (or the work of others at the Site) that is to be inspected, tested or approved is covered by CONTRACTOR without written approval required by Paragraphs 13.02 D or 13.02 E, it must, if requested by CITY's Representative, be uncovered for observation.

C. Uncovering Work as provided in Paragraph 13.02 B, shall be at CONTRACTOR's expense unless CONTRACTOR has given DESIGN PROFESSIONAL and CITY's Representative timely notice of CONTRACTOR's intention to cover the same and DESIGN PROFESSIONAL and CITY's Representative have not acted with reasonable promptness in response to such notice.

D. If Laws or Regulations of any public body (including City) having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish DESIGN PROFESSIONAL and CITY's Representative the required certificates of inspection or approval.

E. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for CITY's and DESIGN PROFESSIONAL's acceptance of materials or equipment to be incorporated into the Work, or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation into the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to CITY and DESIGN PROFESSIONAL.

F. CITY shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests or approvals covered by Paragraph 13.02 D and E;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04 B shall be paid as provided in said Paragraph 13.04 B; and

3. as otherwise specifically provided in the Contract Documents.

13.03 Notice of Defects

A. Prompt notice of all defective Work of which either CITY or DESIGN PROFESSIONAL has actual knowledge will be given to CONTRACTOR. Defective Work may be rejected, corrected or accepted as provided in this Article 13.

13.04 Uncovering Work

A. If any Work (or the work of others at the Site) is covered contrary to the written request of DESIGN PROFESSIONAL or CITY's Representative, it must, if requested by CITY's Representative, be uncovered for DESIGN PROFESSIONAL's or CITY's Representative's observation and replaced at CONTRACTOR's expense.

B. If CITY considers it necessary or advisable that covered Work be observed by DESIGN PROFESSIONAL or CITY's Representative or be inspected or tested by others, CONTRACTOR, at CITY's request, shall uncover, expose or otherwise make available for observation, inspection or testing as may be required, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all costs, losses and damages (including but not limited to all fees and

charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and CITY shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, CITY may make a Claim therefore as provided in Article 16. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefore as provided in Article 16.

13.05 CITY May Stop the Work

A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, CITY may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of CITY to stop the Work shall not give rise to any duty on the part of CITY to exercise this right for the benefit of CONTRACTOR, any Subcontractor, Supplier, other individual or entity or any surety or employee or agent of any of them.

13.06 Correction or Removal of Defective Work

A. If required by CITY, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by either DESIGN PROFESSIONAL or CITY's Representative, remove it and replace it with Work that is not defective. CONTRACTOR shall pay all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.07 Correction Period

A. If within one (1) year after the date of Substantial Completion, or such longer period of time as may be prescribed by Laws or Regulations, by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by CITY or permitted by Laws and Regulations as contemplated in Paragraph 6.10 is found to be defective, CONTRACTOR shall promptly, without cost to CITY and in accordance with CITY's written instructions:

1. correct the repair of damages to such land or areas; or

2. correct such defective Work, or if it has been rejected by CITY, remove it from the Site and replace it with Work that is not defective; and

3. satisfactorily correct or remove and replace any damage to other Work or to the work of others or damage to other lands or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in the event of an emergency where delay by CONTRACTOR would cause serious risk of loss or damage, CITY may have the defective Work corrected or the rejected Work removed and replaced, and all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one (1) year, or such longer period of time as may be prescribed within Paragraph 13.07 A, after such correction or removal and replacement has been satisfactorily completed.

D. CONTRACTOR's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or waiver of the provisions of any applicable statute of limitation or repose.

13.08 Acceptance of Defective Work

A. If, instead of requiring correction or removal and replacement of defective Work, CITY prefers to accept it, CITY may do so. CONTRACTOR shall pay all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to CITY's evaluation of and determination to accept such defective Work and shall pay OWNER for the diminished value of the Work. If any such acceptance occurs prior to DESIGN PROFESSIONAL's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions into the Contract Documents with respect to the Work and, due to the diminished value of the Work, CITY shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, CITY may make a Claim therefore as provided in Article 16. If the acceptance of defective Work occurs after such recommendation, an appropriate amount shall be paid by CONTRACTOR to CITY.

13.09 CITY May Correct Defective Work

A. If CONTRACTOR fails within a reasonable time after written notice from DESIGN PROFESSIONAL or CITY's Representative to correct defective Work or to remove and replace rejected Work as required by CITY in accordance with Paragraph 13.06, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, CITY may, after seven (7) days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. CITY shall proceed expeditiously when exercising the rights and remedies under this Paragraph 13.09. In connection with such corrective and remedial action, CITY may exclude CONTRACTOR from all or part of the Site; take possession of all or part of the Work and suspend CONTRACTOR's services related thereto; take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site; and incorporate into the Work all materials and equipment stored at the Site or for which CITY has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow CITY, CITY's Representative, agents and employees, CITY's other contractors, DESIGN PROFESSIONAL and Consultants access to the Site to enable CITY to exercise the rights and remedies under this Paragraph 13.09.

C. All costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by CITY in exercising such rights and remedies will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions into the Contract Documents with respect to the Work; and CITY shall be entitled to an appropriate decrease in the Contract Price. If CITY and CONTRACTOR are unable to agree as to the amount thereof, CITY may make a Claim therefore as provided in Article 16. Such Claims for costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal and replacement of CONTRACTOR's defective or rejected Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by CITY of CITY's rights and remedies under Paragraphs 13.06 and 13.09.

ARTICLE 14 PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

A. 01290.02 Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into form 01290.01 Application for Payment acceptable to DESIGN PROFESSIONAL and CITY. Progress payments for Unit Price Work will be based on the number of units completed.

14.02 Application for Progress Payments

A. Application for Payment

1. At least twenty (20) days before the date stipulated in the Supplementary Conditions for each progress payment (but not more often than once a month), CONTRACTOR shall submit to DESIGN PROFESSIONAL for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated into the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, paid invoice or other documentation warranting that CITY has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect CITY"'s interest therein, all of which will be subject to CITY's approval.

2. Beginning with the second Application for Payment, each Application shall include:

a. an affidavit of CONTRACTOR stating that all previous progress payments received for the Work have been applied to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment, and

b. a copy of the most recent 00485.01 M/WBE Monthly Utilization Report CONTRACTOR has submitted to the CITY's Human Relations Department.

c. a copy of the most recent 00485.02 Project Workforce Monthly Report and 00485.03 Company-Wide Workforce Monthly Report CONTRACTOR has submitted to the OWNER's Human Relations Department.

d. an update to the approved schedule pursuant to paragraphs 6.04 and 6.05.

3. The amount of retainage with respect to progress payments will be stated in the Supplementary Conditions.

B. Review of Applications

1. DESIGN PROFESSIONAL will, within ten (10) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to CITY, or return the Application to CONTRACTOR indicating in writing DESIGN PROFESSIONAL's reasons for refusing to recommend payment. In the latter case, CONTRACTOR shall make the necessary corrections and resubmit the Application.

a. After presentation of the Application for Payment to CITY, and if CITY's Representative agrees with DESIGN PROFESSIONAL's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02 B.4) become due and will be paid by CITY to CONTRACTOR, subject to the provisions of Laws or Regulations.

b. No payment shall be approved until the CONTRACTOR has submitted with the Application accompanying documentation as required by the Contract Documents, including, but not limited to, the documentation required by paragraphs 6.04 and 6.05.

2. DESIGN PROFESSIONAL's recommendation of any payment requested in an Application for Payment will constitute a representation by DESIGN PROFESSIONAL to

CITY, based on DESIGN PROFESSIONAL's observations of the executed Work as an experienced and qualified DESIGN PROFESSIONAL and on DESIGN PROFESSIONAL's review of the Application for Payment and the accompanying data and schedules, that to the best of DESIGN PROFESSIONAL's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.06, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to CONTRACTOR being entitled to such payment appear to have been fulfilled in so far as it is DESIGN PROFESSIONAL's responsibility to observe the Work.

3. DESIGN PROFESSIONAL's recommendation of any payment, including final payment, shall not mean that DESIGN PROFESSIONAL is responsible for CONTRACTOR's means, methods, techniques, sequence or procedures of construction, safety precautions and programs incident thereto, or any failure of CONTRACTOR to comply with Laws or Regulations applicable to the furnishing or performance of Work.

4. DESIGN PROFESSIONAL may refuse to recommend the whole or any part of any payment if, in DESIGN PROFESSIONAL's opinion, it would be incorrect to make the representations to CITY referred to in Paragraph 14.02 B.2. DESIGN PROFESSIONAL may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in DESIGN PROFESSIONAL's opinion to protect CITY from loss because:

a. the Work is defective, or completed Work has been damaged requiring correction or replacement;

b. the Contract Price has been reduced by Written Amendment or Change Orders;

c. CITY has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

d. DESIGN PROFESSIONAL has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.

C. Reduction in Payment

1. CITY may refuse to make payment of the full amount recommended by DESIGN PROFESSIONAL because:

a. Claims have been made by third parties against CITY on account of CONTRACTOR's performance or furnishing of the Work; or

b. Claims have been made by CITY against CONTRACTOR in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to CITY to secure the satisfaction and discharge of such Claims;

c. there are other items entitling CITY to a set-off against the amount recommended; or

d. CITY has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02 B.4.a through c or 15.02 A.1 through 4; but CITY must give CONTRACTOR written notice (with a copy to DESIGN PROFESSIONAL) stating the reasons for such action and promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by CITY and CONTRACTOR, when CONTRACTOR corrects to CITY's satisfaction the reasons for such action; or

e. CITY has made a different determination of the actual quantities and classifications of Unit Price Work.

14.03 CONTRACTOR's Warranty of Title

A. CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated into the Project or not, will pass to CITY no later than the time of payment, free and clear of all Liens.

14.04 Substantial Completion

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify CITY and DESIGN PROFESSIONAL in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that CITY issue a certificate of Substantial Completion. Within a reasonable time thereafter, CITY, together with CONTRACTOR and DESIGN PROFESSIONAL, shall make an inspection of the Work to determine the status of completion. If DESIGN PROFESSIONAL does not consider the Work substantially complete, DESIGN PROFESSIONAL will notify CONTRACTOR and CITY in writing giving the reasons therefore. If DESIGN PROFESSIONAL considers the Work substantially complete, DESIGN PROFESSIONAL will prepare and deliver to CITY a recommended certificate of Substantial Completion that shall establish the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. CITY shall have seven (7) days after receipt of the recommended certificate during which to make written objection to DESIGN PROFESSIONAL as to any provisions of the certificate or attached list. At the time of delivery of the recommended certificate of Substantial Completion, DESIGN PROFESSIONAL will deliver to CITY and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between CITY and CONTRACTOR with respect to security, operation, safety, protection of the Work, maintenance, heat, utilities, insurance and warranties and guarantees.

B. CITY shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but CITY shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 Partial Utilization

A. Use by CITY at CITY's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which CITY, DESIGN PROFESSIONAL and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by CITY for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

1. CITY at any time may request CONTRACTOR in writing to permit CITY to use any such part of the Work which CITY believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to CITY and DESIGN PROFESSIONAL that such part of the Work is substantially complete and request CITY to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify CITY and DESIGN PROFESSIONAL in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request CITY to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, CITY, together with CONTRACTOR and DESIGN PROFESSIONAL, shall make an inspection of that part of the Work to determine its status of completion. If DESIGN PROFESSIONAL does not consider that part of the Work to be substantially complete, DESIGN PROFESSIONAL will notify CITY and CONTRACTOR in writing, giving the reasons therefore. If DESIGN PROFESSIONAL considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to

certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of Paragraph 5.09 with respect to property insurance.

14.06 Final Inspection

A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, DESIGN PROFESSIONAL will make a final inspection with CITY and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 Final Payment

A. Application for Payment

1. After CONTRACTOR has completed all corrections required by Paragraph 14.06 to the satisfaction of DESIGN PROFESSIONAL and CITY's Representative and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by Paragraph 5.04, certificates of inspection, marked-up record documents (as provided in Paragraph 6.13) and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

a. all documentation required by the Contract Documents, including but not limited to the evidence of insurance required by Subparagraph 5.04 B.7; and

b. 01290.14 "Contractor Affidavit for Final Payment" from CONTRACTOR and 01290.15 "Subcontractor Affidavit for Final Payment" from all Subcontractors, regardless of tier.

B. Review of Application and Acceptance

1. If, on the basis of DESIGN PROFESSIONAL's and CITY's Representative's observation of the Work during construction and final inspection, and DESIGN PROFESSIONAL's and CITY's Representative's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, DESIGN PROFESSIONAL and CITY's Representative are satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, DESIGN PROFESSIONAL will, within ten (10) days after receipt of the final Application for Payment, indicate in writing DESIGN PROFESSIONAL's and CITY's Representative's recommendation of payment and present the Application to CITY for payment. At the same time DESIGN PROFESSIONAL will also give written notice to CITY and CONTRACTOR that the Work is acceptable subject to the provisions of Paragraph 14.09.

2. Otherwise, DESIGN PROFESSIONAL will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application to DESIGN PROFESSIONAL. After the presentation to CITY of the Application and accompanying documentation, in appropriate form and substance, including applicable federal and state prevailing wage provisions, and with DESIGN PROFESSIONAL's recommendation and notice of acceptability, the amount recommended by DESIGN PROFESSIONAL will become due and will be paid by CITY to CONTRACTOR in accordance with Laws and Regulations.

14.08 Final Completion Delayed

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if DESIGN PROFESSIONAL so recommends and CITY concurs, CITY shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of DESIGN PROFESSIONAL, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by CITY for Work not fully completed or corrected is less than the retainage stipulated in the Supplementary Conditions, and if Bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to DESIGN PROFESSIONAL with the Application for Payment. Payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all claims by CITY against CONTRACTOR, except claims previously made in writing and still unsettled, or claims arising from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by CONTRACTOR against CITY other than those previously made in writing pursuant to Paragraphs 16.02 and 16.03 and still unsettled.

14.10 Completion of Work by CITY

A. If CITY must complete the Work, all costs and charges incurred by CITY, together with the cost of completing the Work under the Contract, will be deducted from any monies due or which may become due CONTRACTOR. If such expense exceeds the sum which would have been payable under the Contract, then CONTRACTOR and the surety shall be liable and shall pay to CITY the amount of such excess.

ARTICLE 15 SUSPENSION OF WORK AND TERMINATION

15.01 CITY May Suspend Work

A. Notwithstanding any other provision of this Contract, at any time and without cause, and at is sole and absolute discretion, CITY, may suspend the Work or any portion of the Work by written notice to CONTRACTOR, which will initially fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed in the notice unless the date is changed by a subsequent written notice from CITY. CONTRACTOR may be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any suspension if CONTRACTOR makes a Claim therefore in accordance with Article 16.

B. CONTRACTOR will not be allowed an adjustment in the Contract Price or an extension of the Contract Times if CITY suspends the Work because CONTRACTOR's acts or omissions create or cause an emergency that CITY believes affects the safety or protection of persons, the Work, or property at the Site or adjacent thereto. CITY may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been adequately addressed by CONTRACTOR; however, this right of CITY to stop the Work shall not give rise to any duty on the part of CITY to exercise this right for the benefit of CONTRACTOR, any Subcontractor, Supplier, other individual or entity or any surety or employee or agent of any of them.

15.02 CITY May Terminate for Default

A. CONTRACTOR may be deemed in default and CITY may terminate the services of CONTRACTOR upon the occurrence of any one or more of the following events:

1. CONTRACTOR fails to perform the Work in accordance with the Contract Documents

(including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under Paragraph 2.06 and 2.07 as adjusted from time to time pursuant to Paragraphs 6.04, 6.05, 12.02 and 12.03);

2. CONTRACTOR abandons the Work or declares its intention to abandon the Work;

3. CONTRACTOR assigns or attempts to assign its rights or obligations under this Contract or any part thereof to any third party without the prior written consent of CITY;

4. CONTRACTOR fails to make prompt payment duly owing to any subcontractor for Work completed in accordance to the Contract Documents or material supplier for materials delivered for incorporation into the Work within thirty (30) calendar days after payment was due;

5. CONTRACTOR fails to achieve the required dates of substantial and final completion;

6. CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

7. CONTRACTOR disregards the authority of DESIGN PROFESSIONAL or OWNER; or

8. CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents.

B. CITY may, after giving CONTRACTOR (and the surety) seven (7) days written notice and to the extent permitted by Laws or Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate into the Work all materials and equipment stored at the Site or for which CITY has paid CONTRACTOR but which are stored elsewhere, and finish the Work as CITY may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CITY arising out of or resulting from completing the Work, such excess may be paid to CONTRACTOR. If such costs, losses and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to CITY within fourteen (14) calendar days of CITY'S demand for payment. When exercising any rights or remedies under this Paragraph CITY shall not be required to competitively bid this work unless required by law.

C. Where CONTRACTOR's services have been so terminated by CITY, the termination will not affect any rights or remedies of CITY against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by CITY will not release CONTRACTOR from liability.

D. If, after a default termination, it is determined that the CONTRACTOR was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the CITY. The CITY shall then be liable to CONTRACTOR for only those costs enumerated in paragraph 15.03.

15.03 CITY May Terminate for Convenience

A. Notwithstanding any other provision of this Contract, upon seven (7) calendar days written notice to CONTRACTOR, CITY may, at its sole and absolute discretion, without cause and without prejudice to any other right or remedy of CITY, elect to terminate the Contract. In such case, CONTRACTOR shall, with thirty (30) calendar days of receiving notice of termination under this paragraph, submit to CITY its statement of costs and expenses and shall be paid:

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. for all costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and

4. for reasonable expenses directly attributable to termination if approved in advance by CITY.

B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

C. CONTRACTOR waives any costs not submitted to CITY pursuant to paragraph 15.03.A.

D. CITY shall, within thirty (30) calendar days after receipt of CONTRACTOR's statement, pay CONTRACTOR all amounts it determines are properly determined.

ARTICLE 16 CLAIMS AND DISPUTES

16.01 Definition

A. A Claim is a demand or assertion by the CONTRACTOR seeking, as a matter of right, the adjustment of Contract price and/or times with respect to the terms of the Contract.

16.02 Written Notice and Burden of Proof

A. Claims must be made by written notice pursuant to Paragraph 17.01. The written notice shall clearly indicate that the CONTRACTOR is making a claim. The responsibility to substantiate Claims shall rest with the CONTRACTOR. No Claim may be made under this Contract except as provided in this Article.

B. Certification of Claim: The written notice of Claim shall include the following statement signed by the CONTRACTOR's representative: "The CONTRACTOR certifies that all statements made and the facts set out in this claim are true and correct and that no false records have been submitted in support of this claim." **Strict compliance with this paragraph shall be a condition precedent to the creation, existence or validity of any Claim**.

16.03 Time Limits on Claims

A. The CONTRACTOR must give notice to the CITY within fourteen (14) calendar days after the denial of a request for or failure to reach an agreement on a change in Contract Price and/or change in Contract Time pursuant to Article 11 and Article 12 respectively. After the fourteen (14) day period for making Claims has expired, the Claim shall be considered waived.

B. The CONTRACTOR shall submit the Claim to the CITY's Representative.

16.04 Continuing Contract Performance

A. Pending final resolution of a Claim, unless otherwise agreed in writing, the CONTRACTOR shall proceed diligently with performance of the Work and the CITY shall continue to make payments in accordance with the Contract Documents. The CITY may, but is not obligated to, notify the Surety of the nature and amount of the Claim.

16.05 Injury or Damage to Person or Property

A. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts that party is legally liable, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding thirty

(30) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter.

16.06 Initial Resolution of Claims and Disputes

A. After the CONTRACTOR has submitted the Claim to the CITY's Representative, the CITY'S Representative and CONTRACTOR'S Representative shall conduct a settlement conference within fourteen (14) calendar days from the date of receipt of the Claim. If the Claim is not settled within seven (7) calendar days following the date of the settlement conference, the CITY'S Representative and the CONTRACTOR's Representative shall state, in writing, following the conclusion of the seven (7) calendar day period, their respective position as to the matters in dispute.

B. The CITY'S and CONTRACTOR'S statement of positions shall state all known factual grounds for each party's position. If the dispute remains unresolved at the end of the seven (7) calendar days from submission of the parties' written position statements, the CONTRACTOR shall have the right to proceed with the pursuit of Claims pursuant to paragraph 16.07.

C. If a Claim has been resolved, the OWNER will prepare or obtain appropriate documentation.

16.07 Final Resolution of Claims and Disputes

A. All administrative procedures set forth in this contract must first be exhausted before suit is filed.

B. If the CITY'S Representative and the CONTRACTOR'S Representative are unable to resolve the dispute pursuant to 16.06, the parties must submit their statements of position to the Director, who shall review the Claim and make a decision within fourteen (14) calendar days.

C. Absent fraud, gross mistake or bad faith, the Director's decision shall be final and binding on CITY and CONTRACTOR within fourteen (14) calendar days after issuance. The CONTRACTOR shall give written notice to the CITY stating its intent to submit its Claim to a court of law pursuant to paragraph 17.05.A. within thirty (30) calendar days after notice of Director's decision.

D. The time frames for the Director's decision and for CONTRACTOR'S written notice of intent may be tolled by participation in voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of the mediator shall be shared equally among the parties participating in the mediation. In no event shall any time frame be tolled more than 30 days for mediation. However, mediation may be employed at any time at the discretion and mutual agreement of the parties.

E. If the dispute is not resolved during voluntary mediation, The CONTRACTOR agrees that it will file no suit based on facts or evidentiary materials that were not presented for consideration to the CITY during the mediation process or of which the CONTRACTOR had knowledge and failed to present during the administrative procedures.

ARTICLE 17 MISCELLANEOUS

17.01 Giving Notice

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be given by personal delivery, by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice or by confirmed electronic facsimile transmission. Notice is effective on the date of personal delivery, deposit of registered or certified mail, postage prepaid, or confirmed electronic facsimile transmission.

17.02 Computation of Times

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last calendar day of such period. If the last day of such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 Cumulative Remedies

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR and all of the rights and remedies available to CITY and DESIGN PROFESSIONAL hereunder are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

17.04 Survival of Obligations

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract.

17.05 Controlling Law

A. This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The CITY and CONTRACTOR: (1) shall submit exclusively to the jurisdiction of the state and federal courts located in Jackson County, Missouri and no other; (2) shall waive any and all objections to jurisdiction and venue; and (3) shall not raise forum non conveniens as an objection to the location of any litigation.

NON-CONSTRUCTION
APPLICATION FOR PAYMENT
Contract/Project Number _____
Contract/Project Title _____

Final Payment ☐
Application Number: 1 Date:_____
Ordinance Number: _____ Ordinance Date:_____
City PO Number: _____

Contractor:
Legal Name _____
Mail Address: _____
City, ST Zip _____
Vendor Number _____
Application for Work Accomplished: From _____ To: SLBE Pre-Payment[1]
Name of Kansas City, MO Project Mgr: _____

[Enter Pre-Payment Amount on Line [6] of Application Number 1. Delete SLBE Prepayment and footnote if not applicable.]

Original Contract Amount	[1]	$0.00		
Net by Amendments ___through___	[2]	$0.00		
Maximum Obligation (1+2)			[3]	$0.00
Total Work Completed to Date			[4]	$0.00
Total Previous Payments			[5]	$0.00
PAYMENT DUE CONTRACTOR (4-5)			[6]	$0.00

Instructions to Contractor:

1. Complete and sign this Application and attach the following items: A) **documentation** of expenses per contract (ie.services performed; actual salary of personnel for time charges directly to the project; and/or actual reasonable expenses incurred, AND, B) a photocopy of your most recent **00485.01 HRD MWBE Monthly Utilization Report** submitted to Human Relations Dept.
2. If this is the First application for payment and if Contract amount exceeds $127,000, then also attach proof of tax compliance (**Revenue Clearance Letter**).
3. If this is the Final application for payment, then also attach: **01290.14 Contractor Affidavit for Final Payment; 01290.15 Subcontractor Affidavit for Final Payment;** and proof of tax compliance (**Revenue Clearance Letter**).
4. Submit Application to: _____ Department
   Name, Project Manager
   414 East 12th Street - City Hall, _____ Floor
   Kansas City, MO 64106

[1]Any SLBE Pre-Payment will be reflected in "Previous Payments" beginning with the second Application for Payment.

Contractor:

Submitted By: _____ Signature: _____ Date:_____
Phone: _____ Fax: _____ E-mail:_____

Kansas City:

Approved By: _____ Project Manager Date:_____
Approved By: _____ Director Date:_____

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:
AGENT NAME AND ADDRESS	PHONE (A/C, No, Ext): / FAX (A/C, No):
	E-MAIL ADDRESS:
	INSURER(S) AFFORDING COVERAGE / NAIC #
	INSURER A : ABC INSURANCE COMPANY
INSURED	INSURER B :
CONTRACTOR NAME AND ADDRESS	INSURER C :
	INSURER D :
	INSURER E :
	INSURER F :

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	**GENERAL LIABILITY** ☑ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☑ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☑ PRO-JECT ☐ LOC	Y	Y	POLICY NUMBER	1/1/2011	Current	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG $	$ 1,000,000 $ 50,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
A	**AUTOMOBILE LIABILITY** ☑ ANY AUTO ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☑ HIRED AUTOS ☑ NON-OWNED AUTOS	Y	Y	POLICY NUMBER	1/1/2011	Current	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) $	$ 1,000,000 $ $ $ $
A	☑ **UMBRELLA LIAB** ☑ OCCUR **EXCESS LIAB** ☐ CLAIMS-MADE DED ☑ RETENTION $ 10,000	Y	Y	POLICY NUMBER	1/1/2011	Current	EACH OCCURRENCE AGGREGATE $	$ 2,000,000 $ 2,000,000 $
A	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N: N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	Y	POLICY NUMBER	1/1/2011	Current	☑ WC STATU-TORY LIMITS ☐ OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
A	Leased/Rented/Equip. Owned Equipment Builders Risk/Installation Floater	N/A	Y	POLICY NUMBER	1/1/2011	Current	Limit; Deductible Limit; Deductible Limit; Deductible	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Project No. _____ [Title]. Certholder (City) and _____ (Design Professional) and any other entities named in 00800 SCs are named as primary, noncontributing Additional Insureds including products and completed operations, excluding workers compensation, employers liability and professional liability. Waiver of subrogation applies as allowed by law. [The policies required above shall contain no exclusions for work expressly within the subcontractors scope of work.]

CERTIFICATE HOLDER

City of Kansas City, Missouri

_____ [Department]

_____ [Address]

Kansas City, MO _____ [Zip]

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ATTACHMENT F

CITY – LICENSED GEOGRAPHICAL INFORMATION SYSTEM DATA

CITY will provide licensed materials for Geographical Information Systems to be used for the project as follows:

Grant of License. CITY grants to DESIGN PROFESSIONAL and DESIGN PROFESSIONAL hereby accepts, upon the express terms and conditions contained in this Agreement, a non-exclusive License to use the information described herein in the form produced and maintained by the Geographical Information System produced and maintained by City.

License Materials. The materials licensed for use by DESIGN PROFESSIONAL under this Agreement are the forms which can be read or manipulated by computer of the geographical and physical characteristic information collected and assimilated in the records of City ("Licensed Materials").

Use of Licensed Materials. Subject to the terms, conditions and prohibitions of this Agreement, DESIGN PROFESSIONAL shall be entitled to use the information contained in the Licensed Materials to accomplish the scope of services provided by DESIGN PROFESSIONAL. At the completion of the Agreement, DESIGN PROFESSIONAL shall return all materials to the CITY, and shall permanently remove the Licensed Materials from any media used by DESIGN PROFESSIONAL. At the end of the Agreement, DESIGN PROFESSIONAL shall provide a written certification that all materials are returned and that all Licensed Materials, including copies, have been removed from the equipment or media of DESIGN PROFESSIONAL.

Transfer of Licensed Materials. This license is expressly nontransferable and DESIGN PROFESSIONAL shall not transfer any interest, entitlement or obligation under this Agreement to any other person or entity.

Data. The data and information contained in the Licensed Materials shall be those files and systems as recorded and existing as of the time DESIGN PROFESSIONAL requests the information.

Title. The custody and title and all other rights and interests in the Licensed Materials are and shall at all times remain with the CITY and with the Offices or officials of the CITY having official custody of the Licensed Materials.

Not Public Records. The database in the form of the Licensed Materials is proprietary, intellectual property of the CITY and shall not be considered or deemed as open, public records, except as provided in §256.670, RSMo. DESIGN PROFESSIONAL shall and hereby expressly agrees that it will, recognize the property interests of CITY and CITY agrees that it is not, pursuant to this License, a custodian of any open, public records, except as may exist pursuant to §256.670 RSMo.

Access to Materials. Pursuant to the terms and conditions of this agreement, DESIGN PROFESSIONAL shall be provided access to obtain the Licensed Materials in a periodic basis for the term of this Agreement. As provided in this Agreement, DESIGN PROFESSIONAL, shall be entitled to any Modifications, updates, renewals or additional data or information under the License granted by this Agreement.

Updated Material and Modifications. CITY shall in accordance with this Agreement and upon request of the DESIGN PROFESSIONAL provide to DESIGN PROFESSIONAL updates to or modifications of all or any specific parts of the data or information in the Licensed Materials. Any such updates or modifications provided by CITY shall be covered by and subject to each and all of the terms and conditions of this Agreement. Furthermore, upon completion or termination of this Agreement, DESIGN PROFESSIONAL, will provide to CITY in a compatible form, updated information developed during the execution of the Scope of Services provided by DESIGN PROFESSIONAL.

Data Contents. The data contained in the materials licensed by CITY to DESIGN PROFESSIONAL under this Agreement shall include that information necessary to allow DESIGN PROFESSIONAL to perform scope of services outlined in the Agreement.

Waiver. The waiver of any breach of any provision of this license shall not constitute a waiver of any subsequent breach of the same or other provisions of the Agreement.

Modifications. Any modification to the rights provided herein for licensed materials shall be in writing executed by each party.

ATTACHMENT G

Non-Construction Subcontractors Listing

Contractor shall submit Subcontractor information on this form prior to Subcontractor beginning Work. Contractor shall update this listing and keep it current for the life of the Contract.

	Company Name Contact Name and Email	Address Phone No. and Fax No.
1.	Name:_____ Email:	Address:_____ _____ Phone:_____ Fax:_____
2.	Name:_____ Email:	Address:_____ _____ Phone:_____ Fax:_____
3.	Name:_____ Email:	Address:_____ _____ Phone:_____ Fax:_____
4.	Name:_____ Email:	Address:_____ _____ Phone:_____ Fax:_____
5.	Name:_____ Email:	Address:_____ _____ Phone:_____ Fax:_____
6.	Name:_____ Email:	Address:_____ _____ Phone:_____ Fax:_____
7.	Name:_____ Email:	Address:_____ _____ Phone:_____ Fax:_____
8.	Name:_____ Email:	Address:_____ _____ Phone:_____ Fax:_____
9.	Name:_____ Email:	Address:_____ _____ Phone:_____ Fax:_____
10.	Name:_____ Email:	Address:_____ _____ Phone:_____ Fax:_____

Contractor – Company Name: _____
Submitted By: _____
Title: _____
Telephone No.: _____
Fax No.: _____
E-mail: _____
Date: _____

EMPLOYEE ELIGIBILITY VERIFICATION AFFIDAVIT

(Required for any contract with the City of Kansas City, Missouri in excess of $5,000.00)

STATE OF _____)
) ss
COUNTY OF _____)

On this _____ day of _____, 20___, before me appeared _____, personally known by me or otherwise proven to be the person whose name is subscribed on this affidavit and who, being duly sworn, stated as follows:

I am of sound mind, capable of making this affidavit, and personally swear or affirm that the statements made herein are truthful to the best of my knowledge. I am the _____ (title) of _____ (business entity) and I am duly authorized, directed or empowered to act with full authority on behalf of the business entity in making this affidavit.

I hereby swear or affirm that the business entity does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. § 1324a(h)(3).

I hereby additionally swear or affirm that the business entity is enrolled in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986, and that the business entity will participate in said program with respect to any person hired by the business entity to perform any work in connection with the contracted services. I have attached hereto documentation sufficient to establish the business entity's enrollment and participation in the required electronic verification of work program.

I am aware and recognize that unless certain contractual requirements are satisfied and affidavits obtained as provided in Section 285.530, RSMo, the business entity may face liability for violations committed by its subcontractors, notwithstanding the fact that the business entity may itself be compliant.

I acknowledge that I am signing this affidavit as the free act and deed of the business entity and that I am not doing so under duress.

_____
Affiant's signature

Subscribed and sworn to before me this _____ day of _____, 20____.

_____
Notary Public

My Commission expires:

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

SECTION 6
DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

This project is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. Failure by the Contractor to carry out these requirements is a material breach of the resulting contract, which may result in the termination of the contract or such other remedy as CITY OF KANSAS CITY MISSOURI deems appropriate.*

1. **Non-discrimination.** This contractor shall not discriminate on the basis of race, color national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of the Contract, which may result in the termination of the Contract or such other remedy as CITY OF KANSAS CITY MISSOURI deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph. See 49 CFR 26.13(b).

2. **DBE Certification.** CITY OF KANSAS CITY MISSOURI will only recognize firms that are certified as DBE's under the DOT guidelines found in 49 CFR Part 26. DBE subcontractors must be certified as a DBE by a member of the Missouri Regional Certification Committee, which includes KCMO, MoDOT, City of St. Louis, Metro in St. Louis or CITY OF KANSAS CITY MISSOURI. A list of certified firms may be found at www.modot.mo.gov/ecr/index.htm. MBE and WBE certifications for other agencies will not be considered.

3. **DBE Participation Credit.** DBE firms may participate as Prime Contractors, Subcontractors or Suppliers.

   The following shall be credited towards achieving the goals, except as provided herein:

   A. The total contract dollar amount that a qualified DBE Prime Contractor earns for that portion of work on the contract that is performed by its own workforce, is performed in a category in which the DBE is currently certified, and is a commercially useful function as defined by the Program. DBE Prime Contractors must perform thirty percent (30%) of the contract value.

   B. The total contract dollar amount that a Prime Contractor has paid or is obligated to pay to a subcontractor that is a qualified DBE; and

   C. Subcontractor participation with a lower tier DBE subcontractor; and

   D. Sixty percent (60%) of the total dollar amount paid or to be paid by a Prime Contractor to obtain supplies or goods from a supplier who is not a manufacturer and who is a qualified DBE. If the DBE is a manufacturer of the supplies, then one hundred percent (100%) may be credited, to be determined on a case-by-case basis.

   E. <u>NO CREDIT</u>, however, will be given for the following:

      1. Participation in a contract by a DBE that does not perform a commercially useful function as defined by the Program; and

      2. Any portion of the value of the contract that a DBE Subcontractor subcontracts back to the

prime contractor or any other contractor who is not a qualified DBE; and

a. Materials and supplies used on the contract unless the DBE is responsible for negotiating the price, determining quality and quantity, ordering the materials and installing (where applicable) and paying for material itself; and

b. Work performed by a DBE in a scope of work other than that in which the DBE is currently certified.

4. **Documents Due Within 48 Hours of Bid Closing:**

A. Letter of Intent to Subcontract. To be completed for each DBE firm on the project and signed by both the Prime and the DBE.

B. Contractor Utilization Plan/Request for Waiver. This is a commitment that the Prime understands the DBE participation required on the project. In the event the Prime is not making a commitment to meet or exceed the established goal on the project, they must request a waiver and provide documentation that good faith efforts were expended to try to meet the goal. Good faith efforts are efforts that, given all relevant circumstances, a Proposer actively and aggressively seeking to meet the goals can reasonably be expected to make.

Failure to meet the contracted DBE participation commitment without documented evidence of good faith efforts may result in termination of the contract.

In evaluating good faith efforts, CITY OF KANSAS CITY MISSOURI will consider whether the Proposer has performed the following, along with any other relevant factors:

1. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitation.

2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

3. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

4. Negotiating in good faith with interested DBEs.

a. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

b. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, include DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractor are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

5. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

6. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the CITY OF KANSAS CITY MISSOURI or contractor.

7. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

8. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

5. **Documents Due After Award:**

A. CITY OF KANSAS CITY MISSOURI reserves the right to review the Contractor's written agreement with its subcontractors to confirm that required federal contract clauses are included. CITY OF KANSAS CITY MISSOURI may perform random audits and contact minority subcontractors to confirm the reported participation.

B. Subcontractor Monthly Utilization Report. Contractors will be required to submit this report with each pay application to CITY OF KANSAS CITY MISSOURI. This report will include payments to ALL subcontractors – DBE and non-DBE. CITY OF KANSAS CITY MISSOURI may require lien waivers from all subcontractors before reimbursement is made to the Contractor. CITY OF KANSAS CITY MISSOURI may perform random audits and contact minority subcontractors to confirm the reported participation. Failure to meet the contracted goal without documented evidence of good faith effort may result in the termination of the contract.

C. Request for Modification, Replacement or Termination of Disadvantaged Business Enterprise (DBE) Project Participation. Contractor is responsible for meeting or exceeding the DBE commitment amounts listed on the *Schedule of Participation by Contractor and Subcontractors* form submitted as part of Contractor's Bid Documents and as amended by any previously approved Request for Modification/Substitution. Any Change Orders or amendment modifying the amount Contractor is to be compensated will impact the amount of compensation due to DBEs for purposes of meeting or exceeding the Bidder/Proposer commitment. Contractor shall consider the effect of a Change Order or amendment and submit a Request for Modification/Substitution if the DBE commitment changes.

1. **Termination Only for Cause.** Once the contract has been awarded, Contractor may not

terminate a DBE subcontractor without CITY OF KANSAS CITY MISSOURI's prior written consent. This includes, but is not limited to, instances in which a Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

2. **Good Cause.** Good cause includes the following circumstances:

   a. The listed DBE subcontractor fails or refuses to execute a written contract; or

   b. The listed DBE subcontractor fails or refuses to perform the work of its normal industry standards. Provided, however, that the good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Prime Contractor; or

   c. The listed DBE subcontractor fails or refuses to meet the Prime Contractor's reasonable, nondiscriminatory bond requirements; or

   d. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness; or

   e. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1200 or applicable state law; or

   f. The DBE subcontractor is not a responsible contractor; or

   g. The listed DBE subcontractor voluntarily withdraws from the project and provides the Prime Contractor written notice of its withdrawal;

   h. The listed DBE is ineligible to receive DBE credit for the type of work required;

   i. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

   j. Other documented good cause that compels CITY OF KANSAS CITY MISSOURI to terminate the DBE subcontractor. Provided the good cause does not exist if the Prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Prime Contractor can self-perform the work for which the DBE contractor was engaged or so that the Prime Contractor can substitute another DBE or non-DBE contractor.

3. Before submitting its request to terminate or substitute a DBE subcontractor, the Prime Contractor must give notice in writing to the DBE subcontractor, with a copy to CITY OF KANSAS CITY MISSOURI, of its intent to request to terminate and/or substitute, and the reason for the request.

4. The Prime Contractor must give the DBE five days to respond to the Prime Contractor's notice and advise the CITY OF KANSAS CITY MISSOURI and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why CITY OF KANSAS CITY MISSOURI should not approve the Prime Contractor's action.
   If required in a particular case as a matter of public necessity (e.g., safety), the response period may be shortened.

D. <u>DBE Job-Site Review Commercially Useful Function (CUF) Determination</u>. CITY OF KANSAS CITY MISSOURI will be conducting on-site interviews with all DBE contractors. The number of

interviews will be based on the DBE's projected scope of work. CITY OF KANSAS CITY MISSOURI staff will work closely with the Prime Contractor on the project schedule to determine when DBE subcontractors will be on the project.

For questions concerning CITY OF KANSAS CITY MISSOURI's DBE Program or Vendor Registration/Affirmative Action Requirements please contact us.

Phillip Yelder, director
City Hall, 4th floor
414 E. 12th St.
Kansas City, MO 64106
Phone: 816-513-1836
Fax: 816-513-1805
www.kcmo.org

KANSAS CITY Missouri
CONTRACTOR UTILIZATION PLAN/REQUEST FOR WAIVER

Project Number _____ Project Title _____

Prime Contractor _____

STATE OF _____)
) SS
COUNTY OF _____)

I, _____, of lawful age and upon my oath state as follows:

1. This Affidavit is made for the purpose of complying with the provisions of the Disadvantaged Business Enterprise (DBE) submittal requirements on the above project and the DBE Program and is given on behalf of the Bidder/Proposer listed below. It sets out the Bidder/Proposer's commitment to utilize DBE contractors on the project.

2. The project goal for DBE Participation is _____ **%.** Bidder/Proposer assures that it will utilize a minimum of the following percentages of DBE participation in the above project:

   BIDDER/PROPOSER DBE PARTICIPATION COMMITMENT: _____**%**

3. The following are the DBE subcontractors whose utilization Bidder/Proposer warrants will meet or exceed the above-listed Bidder/Proposer Participation. Bidder/Proposer warrants that it will utilize the DBE subcontractors to provide the goods/services described in the applicable Letter(s) of Intent to Subcontract, (copies of which shall collectively be deemed incorporated herein). ***All firms must currently be certified with the Missouri Regional Certification Committee (MRCC) under 49 CFR Part 26.*** *List additional DBEs, if any, on an additional page and attach to this form.*

   a. Name of DBE Firm _____ % of Work _____
      Address _____
      Telephone No. _____
      Taxpayer ID No. _____

   b. Name of DBE Firm _____ % of Work _____
      Address _____
      Telephone No. _____
      Taxpayer ID No. _____

   c. Name of DBE Firm _____ % of Work _____
      Address _____
      Telephone No. _____
      Taxpayer ID No. _____

TOTAL DBE $ AMOUNT ON PROJECT: $_____

TOTAL DBE % COMMITTED TO PROJECT: _____ %

4. Bidder/Proposer acknowledges that the monetary amount to be paid each listed DBE for their work, and which is approved herein, is an amount corresponding to the percentage of the total contract amount allocable to each listed DBE as calculated in the **Schedule of Participation by Contractor and Subcontractors** form. Bidder/Proposer further acknowledges that this amount may be higher than the subcontract amount listed therein as change orders and/or amendments changing the total contract amount may correspondingly increase the amount of compensation due a DBE for purposes of meeting or exceeding the Bidder/Proposer participation commitment.

5. Bidder/Proposer acknowledges that it is responsible for considering the effect that any change orders and/or amendments changing the total contract amount may have on its ability to meet or exceed the Bidder/Proposer participation. Bidder/Proposer further acknowledges that it is responsible for submitting a **Request for Modification or Substitution** form if it will be unable to meet or exceed the Bidder/Proposer participation set forth herein.

6. If Bidder/Proposer has not achieved the DBE commitment set for this Project, Bidder/Proposer hereby requests a waiver of the DBE commitment that Bidder/Proposer has failed to achieve.

7. Bidder/Proposer will present documentation of its good faith efforts, a narrative summary detailing its efforts and the reasons its efforts were unsuccessful when requested by CITY OF KANSAS CITY MISSOURI.

8. I hereby certify that I am authorized to sign this Affidavit on behalf of the Bidder/Proposer named below and who shall abide by the terms set forth herein:

Bidder/Proposer Primary Contact: _____

Address: _____

_____

Phone Number: _____ Facsimile number: _____

E-mail Address: _____ ___

By _____
(Signature)

Title _____

Date _____
(Attach corporate seal if applicable)

NOTARY:

Subscribed and sworn to before me this _____ day of _____, 20__.

My Commission Expires: _____

_____
Notary Public (Seal)

KANSAS CITY Missouri
LETTER OF INTENT TO SUBCONTRACT
(To be Completed for Each DBE Subcontractor on Project)

Project Number _____

Project Title _____

_____ ("Prime Contractor") agrees to enter into a contractual

agreement with _____ ("DBE Subcontractor"), who will

provide the following goods/services in connection with the above-referenced contract:

(Insert a brief narrative describing the goods/services to be provided. Broad categorizations (e.g., "electrical," "plumbing," etc.) or the listing of the NAICS Codes in which DBE Subcontractor is certified are insufficient and may result in this Letter of Intent to Subcontract not being accepted.)

_____

_____

_____

_____

_____,

for an estimated amount of $_____ or _____% of the total estimated contract value.

DBE Subcontractor is currently certified with the Missouri Regional Certification Committee (MRCC) to perform in the capacities indicated herein. Prime Contractor agrees to utilize DBE Subcontractor in the capacities indicated herein, and DBE Subcontractor agrees to work on the above-referenced contract in the capacities indicated herein, contingent upon award of the contract to Prime Contractor.

_____	_____
Signature: Prime Contractor	Signature: DBE Subcontractor
_____	_____
Print Name	Print Name
_____	_____
Title Date	Title Date

KANSAS CITY MISSOURI
REQUEST FOR MODIFICATION, REPLACEMENT OR TERMINATION
OF DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROJECT PARTICIPATION

This form must be submitted to request substitutions for a DBE listed in the Schedule of Participation By Contractor and Subcontractors form submitted as part of Contractor's Bid Documents as amended by any Change Orders or previously approved Requests for Modification/Substitution. This executed document shall be an amendment to the Contractor's DBE utilization plan.

CONTRACTOR _____

ADDRESS _____

PROJECT NUMBER AND NAME _____

1. As the duly authorized representative of the above Contractor, I am authorized to request this substitution or modification on behalf of the Contractor and hereby request that the Kansas City MISSOURI (CITY OF KANSAS CITY MISSOURI) recommend or approve:

   _____ SUBSTITUTION OF DBE FIRM

   Name of Current DBE Firm To Be Removed _____

   Scope of Work _____

   Contracted Amount $_____ Amount of Work Completed To Date $_____

   Name of Proposed DBE Firm _____

   Scope of Work _____

   Amount of Proposed Work $_____ Date Scheduled To Begin Work _____

   _____ MODIFICATION OF THE AMOUNT OF WORK BY DBE FIRM

   Name of DBE Firm _____

   Current % of Contract Commitment _____ Changed % of Contract Commitment _____

2. This Substitution/Modification is necessary because (check all applicable)

   _____ The DBE Subcontractor failed or refuses to execute a written contract.

   _____ The DBE Subcontractor failed or refuses to perform the work of its normal industry standards without good cause and that failure or refusal of the DBE is not a result of bad faith or discriminatory action of the Contractor.

   _____ The DBE Subcontractor failed or refuses to comply with reasonable, non-discriminatory bonding requirements.

   _____ The DBE Subcontractor has become bankrupt, insolvent, or exhibits credit unworthiness (supporting documentation is attached).

_____ The DBE Subcontractor has committed a material default or breach of its contract.

_____ The DBE Subcontractor has voluntarily withdrawn from the project (DBE's written notice of withdrawal is attached).

_____ The DBE owner has died or has become disabled and is unable to complete its work on this Project.

_____ A Change Order and/or Amendment of the Project was issued that modifies the amount Contractor is to be compensated and correspondingly impacts the amount of compensation due to the DBE Subcontractor.

3. I affirm that written notice has been given to the DBE Subcontractor of Contractor's intent to request a substitution or modification (copy attached) and the DBE Subcontractor has been given five (5) business days to respond to the notice (a copy of DBE firm's response is attached).

   EXCEPTION: If required in a particular case as a matter of public necessity (e.g., safety) the response period may be shortened.

4. The following is a narrative summary of Contractor's good faith efforts (as listed in Part A of the City's Bid Documents) exhausted in attempts to substitute the DBE firm named above with other qualified, certified DBE firms for the listed scope of work or any other scope of work on the project. Supporting documentation is attached.

   _____

   _____

   _____

5. Contractor hereby affirms that it has not intentionally attempted to evade the requirements of the Contract or the DBE Program and it is in CITY OF KANSAS CITY MISSOURI's best interest to approve this Request for Substitution or Modification. Additional documentation will be presented when requested by CITY OF KANSAS CITY MISSOURI in order to make its determination.

Submitted By:	Approved By:
_____	_____
Contractor's Authorized Representative	CITY OF KANSAS CITY MISSOURI's Authorized Representative
_____	_____
Title	Title
_____	_____
Date	Date

KANSAS CITY MISSOURI
SUBCONTRACTOR MONTHLY UTILIZATION REPORT

Report Date:	Project Number:	Project Name:		Payment Application No.
Project Address		Contract Award Date:	Contract Start Date:	Total Contract Days:
Prime Contractor Name:		Contact Person/Phone:	Email Address:	
Prime Contractor Address:		Total Contract Amount:	Project DBE Goal (%):	Contractor DBE Commitment on Project (%):

PAYMENTS TO SUBCONTRACTORS (INCUDING DBE AND NON-DBE)

		Contract		Current Payment Application			Previous Payment Applications			Current + Previous Payment Applications				
	DBE ? Yes / No	Amount	% of Total Contract	Total Amount Billed This Period	Retainage This Period	Scheduled Payment This Period	Total Billed to Date	Retainage to Date	Scheduled Payments to Date	Total Billed to Date	Total Retainage to Date	Total Scheduled Payments to Date	Actual Payments Received to Date	% of Contract Paid to Date
General Contractor		$ -	%	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	%
Subcontractor 1		$ -	%	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	%
Subcontractor 2		$ -	%	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	%
Subcontractor 3		$ -	%	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	%
Subcontractor 4		$ -	%	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	%
Subcontractor 5		$ -	%	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	%
Subcontractor 6		$ -	%	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	%
Subcontractor 7		$ -	%	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	%
Subcontractor 8		$ -	%	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	%
TOTALS FOR THIS REPORTING PERIOD		$ -	%	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	%

Report Submitted By: _____

Date Submitted: _____

Report is to be submitted with each pay application

REMINDER: Contractor is responsible for meeting or exceeding the DBE commitment amounts listed on the **Schedule of Participation by Contractor and Subcontractors** form submitted as part of Contractor's Bid Documents and as amended by any previously approved Request for Modification/Substitution. Any Change Orders or amendments modifying the amount Contractor is to be compensated will have correspondingly impacted the amount of compensation due to DBEs for purposes of meeting or exceeding the Bidder/Proposer commitment. Contractor shall consider the effect of a Change Order or amendment and submit a Request for Modification/Substitution form if appropriate.

SCHEDULE OF PARTICIPATION BY CONTRACTOR & SUBCONTRACTORS

Form must be submitted for each prospective offeror and submitted with proposal

PRIME CONTRACTOR				
Name and Address	Telephone No. Fax No.	Type of Work To Be Performed	Value of Work	DBE % Participation
			$	%
ALL SUBCONTRACTOR(S) (DBE & NON-DBE)				
Name and Address	Telephone No. Fax No.	Type of Work To Be Performed	Value of Work	DBE % Participation
			$	%
			$	%
			$	%
			$	%
			$	%

TOTAL VALUE OF WORK $ _____

TOTAL CONTRACT VALUE OF WORK
(FROM 00410 Bid Form) $_____

TOTAL DBE PARTICIPATION $_____

TOTAL PERCENTAGE OF DBE PARTICIPATION _____%

THE UNDERSIGNED WILL ENTER INTO A FORMAL AGREEMENT WITH THE SUBCONTRACTOR(S) FOR THE WORK LISTED ON THIS SCHEDULE.

Prime Contractor (Type/Print) _____ Date _____

Authorized Signature _____ Title _____

Name (Type/Print) _____ Telephone #/Fax # _____

AFFIDAVIT OF PRIMARY PARTICIPANTS
COMPLIANCE WITH SECTION 285.500 RSMO, ET SEQ.
REGARDING EMPLOYEE ELIGIBILITY VERIFICATION

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 20 _____, before me appeared _____, personally known by me or otherwise proven to be the person whose name is subscribed on this affidavit and who, being duly sworn, stated as follows: I am the _____ (title) of _____ (business entity) and I am duly authorized, directed or empowered to act with full authority on behalf of the business entity in making this affidavit.

I hereby swear or affirm that the business entity does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. §1324a(h)(3).

I hereby additionally swear or affirm that the business entity is enrolled in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986, and that the business entity will participate in said program with respect to any person hired to perform any work in connection with the contracted services.

I have attached hereto documentation sufficient to establish the business entity's enrollment and participation in the required electronic verification of work program. I shall require that the language of this affidavit be included in the award documents for all sub-contracts exceeding $5,000.00 at all tiers and that all subcontractors at all tiers shall affirm and provide documentation accordingly.

_____
Affiant's signature

Subscribed and sworn to before me this _____ day of _____, 20____

_____
Notary Public

My Commission expires:

NOTE: An example of acceptable documentation is the E-Verify Memorandum of Understanding (MOU) – a valid, completed copy of the first page identifying the business entity and a valid copy of the signature page completed and signed by the business entity, the Social Security Administration and the Department of Homeland Security.

AFFIDAVIT OF LOWER-TIER PARTICIPANTS
COMPLIANCE WITH SECTION 285.500 RSMO, ET SEQ.
REGARDING EMPLOYEE ELIGIBILITY VERIFICATION

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 20 _____, before me appeared _____, personally known by me or otherwise proven to be the person whose name is subscribed on this affidavit and who, being duly sworn, stated as follows: I am the _____ (title) of _____ (business entity) and I am duly authorized, directed or empowered to act with full authority on behalf of the business entity in making this affidavit.

I hereby swear or affirm that the business entity does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. §1324a(h)(3).

I hereby additionally swear or affirm that the business entity is enrolled in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986, and that the business entity will participate in said program with respect to any person hired to perform any work in connection with the contracted services.

I have attached hereto documentation sufficient to establish the business entity's enrollment and participation in the required electronic verification of work program. I shall require that the language of this affidavit be included in the award documents for all sub-contracts exceeding $5,000.00 at all tiers and that all subcontractors at all tiers shall affirm and provide documentation accordingly.

_____
Affiant's signature

Subscribed and sworn to before me this _____ day of _____, 20____

_____
Notary Public

My Commission expires:

NOTE: An example of acceptable documentation is the E-Verify Memorandum of Understanding (MOU) – a valid, completed copy of the first page identifying the business entity and a valid copy of the signature page completed and signed by the business entity, the Social Security Administration and the Department of Homeland Security.

CERTIFICATION OF PRIMARY PARTICIPANT
REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential Contractor for a major third party contract), _____certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

2. Have not within a three-year period preceding this bid, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

4. Have not within a three-year period preceding this application/bid had one or more public transactions (Federal, State or local) terminated for cause or default.

If the primary participant (applicant for FTA grant, or cooperative agreement, or potential third party Contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.

THE PRIMARY PARTICIPANT (APPLICANT FOR AN FTA GRANT OR COOPERATIVE AGREEMENT, OR POTENTIAL CONTRACTOR FOR A MAJOR THIRD PARTY CONTRACT), _____ _____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C., SECTIONS 3801 *ET SEQ*. ARE APPLICABLE THERETO.

_____
Signature and Title of Authorized Official

_____
Date

CERTIFICATION OF LOWER-TIER PARTICIPANTS REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

The Lower Tier Participant (potential sub-grantee or sub-recipient under an FTA project, potential third party Contractor, or potential subcontractor under a major third party contract) _____ _____, certifies, by submission of this bid, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

If the Lower Tier Participant (potential sub-grantee or sub-recipient under an FTA project, potential third party Contractor, or potential subcontractor under a major third party contract) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this bid.

THE LOWER-TIER PARTICIPANT (POTENTIAL SUB-GRANTEE OR SUB-RECIPIENT UNDER AN FTA PROJECT, POTENTIAL THIRD PARTY CONTRACTOR, OR POTENTIAL SUBCONTRACTOR UNDER A MAJOR THIRD PARTY CONTRACT),_____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C., SECTIONS 3801 *ET SEQ.* ARE APPLICABLE THERETO.

_____

Signature and Title of Authorized Official

_____

Date

CERTIFICATION OF PRIMARY PARTICIPANTS
REGARDING RESTRICTIONS ON LOBBYING

I,_____ (Name and Title of Grantee Official or Potential Contractor for a Major Third Party Contract), hereby certify on behalf of _____
_____(Name of Grantee or Potential Contractor) that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Executed this _____day of _____20____

By_____
Signature of Authorized Official

_____
Title of Authorized Official

CERTIFICATION OF LOWER-TIER PARTICIPANTS
REGARDING RESTRICTIONS ON LOBBYING

I, _____ (Name and Title of Grantee Official or Potential Subcontractor Under a Major Third Party Contract), hereby certify on behalf of _____ (Name of Grantee or Potential Subcontractor) that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Executed this _____day of _____, 20___.

By _____
Signature of Authorized Official

_____
Title of Authorized Official

ANTI-COLLUSION STATEMENT

STATE OF MISSOURI

CITY/COUNTY OF_____

_____

_____ being first duly sworn, deposes and says that he is

_____
Title of Person Signing

of _____

_____
Name of Bidder

that all statements made and facts set out in the proposal for the above project are true and correct; and the bidder (The person, firm, association, or corporation making said bid) has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with said bid or any contract which may result from its acceptance.

Affiant further certifies that bidder is not financially interested in, or financially affiliated with, any other bidder for the above project.

BY_____

BY_____

BY_____

SWORN to before me this _____ day of _____ 20___.

_____
Notary Public

My Commission Expires_____

Fig. 10 - 3

Revised 01-01-09